29487

(18,440.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 266.

ESTHER S. BUCHANAN, ADMINISTRATRIX OF WILLIAM B. BUCHANAN, DECEASED; ESTHER S. BUCHANAN, AND WILSON CAREY BUCHANAN, PLAINTIFFS IN ERROR,

vs.

LAURA PATTERSON, SIDNEY T. DYER, AND ELISHA DYER, JR., HER HUSBAND, ET AL.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF MARYLAND.

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a

Court of Appeals of Maryland.

ESTHER S. BUCHANAN, Individually and as Administratrix of William B. Buchanan and Wilson Carey Buchanan,
vs.
LAURA PATTERSON and Others.

1

Filed Feb'y 17th, 1902.

In the Court of Appeals of Maryland.

ESTHER S. BUCHANAN, Administratrix, etc., *et al.*, Appellants,
vs.
LAURA PATTERSON ET AL., Appellees.

Appeal from the Circuit Court No. 2, of Baltimore City.

To the Honorable James McSherry, chief judge of said court:

The petition of Esther S. Buchanan, individually, and as administratrix of William B. Buchanan, deceased, by Archibald H. Taylor and E. P. Keech, Junior, her counsel of record, and Wilson C. Buchanan by Herbert B. Stimpson, his counsel of record, respectfully shows to your honer:

First. That as appears from the record and proceedings in this cause, the object for which this proceeding was instituted, was the distribution of a sum of money in the hands of your petitioner,

2 Esther S. Buchanan, administratrix of William B. Buchanan, deceased, surviving partner of the firm of S. Smith and Buchanan, which sum of money was the net amount of two awards paid to said administratrix by the Government of the United States, on what were known as "French spoliation claims," by virtue and in pursuance of two acts of Congress of the United States approved January 20, 1885, and March 3, 1899, respectively, and certain decisions and findings of the Court of Claims made under the terms of said act of January 20, 1885, in the two cases of the ship Patapsco, Wm. Hill, master, No. 2011, and of the ship Jane, John Wallace, master, No. 381, then pending in said Court of Claims and reported to Congress in accordance with the terms of said act of January 20, 1885, by which decisions and findings said Court of Claims

3 held that said firm of S. Smith and Buchanan were the lawful holders of certain claims of the kind and amount in said decisions and findings more particularly set forth, being the claims on which the aforesaid awards were made and paid; that said firm was composed of Samuel Smith, James A. Buchanan and William B. Buchanan, all now deceased; that said William B. Buchanan, deceased, was the survivor thereof; that your petitioner Esther S. Buchanan was the administratrix of the estate of said surviving partner, William B. Buchanan, deceased, and that as such administratrix of said surviving partner of said firm, your petitioner was entitled to have from the United States the amounts of

the aforesaid claims, upon which said report, decision and findings, the Congress of the United States by said act of March 3, 1899, made certain appropriations for the payment of the aforesaid awards of the Court of Claims, and directed the payment
4 of the same to your petitioner as administratrix of William B. Buchanan, said surviving partner, "representing Smith and Buchanan," and "who was the surviving partner of the firm of S. Smith and Buchanan," respectively, upon certain terms and conditions therein set forth, among which was a certain provision to the effect that any such award should not be paid to the claimant on whose behalf the appropriation was made, until the Court of Claims shall have certified to the Secretary of the Treasury of the United States, that the personal representatives on whose behalf the awards were so made, did represent the next of kin of their decedents, and also that said claims were not held by assignment, in pursuance of which the Court of Claims did certify to the Secretary of the Treasury, with respect to the two aforesaid awards, that the said Esther S. Buchanan represented the next of kin of Wil-
5 liam B. Buchanan deceased, surviving member, or partner, of the firm of S. Smith and Buchanan, the original owner of said claims, and that the same were not held by assignment, upon which certificates, decisions and findings, the amount of said awards were paid over to your petitioner as administratrix as aforesaid, all of which facts, statutes, acts, findings, decisions, reports and certificates are more particularly set forth or referred to in the pleadings, evidence and record herein.

Second. And that subsequent to the filing of the bill of complaint in these proceedings, certain of the defendants named herein, to wit, J. Louis Smith and others, and Laura Patterson and others, have, by their respective counsel, appeared in these proceedings, and filed answers and amended answers to said bill of complaint herein, in which amended answers they have denied the right of the
6 next of kin of the said William B. Buchanan, deceased, said surviving partner, set up in said bill of complaint, and claimed under and by virtue of the terms and provisions of the acts of Congress aforesaid, to share or participate as such in the distribution of the sum of money in the hands of your petitioner, Esther S. Buchanan, as administratrix of said surviving partner, and that your petitioners, Esther S. Buchanan and Wilson C. Buchanan, are respectively, the daughter and son and the sole next of kin of the said William B. Buchanan, deceased, the aforesaid surviving partner, and as such, it is in said bill of complaint set up and claimed, and has been at all times during the course of the recovery of said award in these proceedings set up and claimed, under and by virtue of the terms and provisions of the acts of Congress aforesaid, they had the right and were entitled to participate in
7 the distribution of said sum of money, in proportion to the interest of their said ancestor, William B. Buchanan, in the property of said firm of S. Smith and Buchanan, of which firm their said ancestor was the surviving partner.

Third. And that by a decree of the circuit court No. 2 of Balti-

more city, made and passed in the above-entitled cause on the twenty-sixth day of June, 1901, it was ordered, adjudged and decreed in conformity with a preceding opinion and decree of this honorable court, appearing at length in these proceedings, that said fund in the hands of your petitioner, Esther S. Buchanan, as administratrix of William B. Buchanan, deceased, said surviving partner, be divided into two equal parts, one whereof should be distributed among the descendants of Samuel Smith, deceased, in being on the third day of March, 1899, and the personal representatives of such

8 of them as may have died since said date, and the other whereof should be distributed among the descendants of James A. Buchanan, deceased, in being on said third day of March, 1899; and it was also further adjudged and decreed therein, that the next of kin of the said William B. Buchanan, deceased, said surviving partner, as such, are not entitled to share in the distribution of the aforesaid fund, and thereby your petitioners, Esther S. Buchanan and Wilson C. Buchanan, as decedents and next of kin of William B. Buchanan, deceased, were denied all right and titled to share or participate in the distribution of said fund, according to the right and claim so as aforesaid set up and maintained by them; and that from said judgment and decree of said circuit court No. 2 of Baltimore city, your petitioners, and each of them, did appeal to this honorable court; and that this honorable court did, by its decree made and passed herein on said appeal,

9 on the thirtieth day of January, 1902, for reasons set forth in an opinion on said day filed, affirm said decree of the circuit No. 2 of Baltimore city, passed herein as aforesaid, and did thereby particularly and finally deny to your said petitioners, Esther S. Buchanan and Wilson C. Buchanan, being the next of kin of the said William B. Buchanan, deceased, as aforesaid, the right to share and participate in the distribution of said fund in the hands of your petitioner, Esther S. Buchanan, as administratrix of William B. Buchanan, deceased, said surviving partner, wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or of a statute, or of a commission held under the United States, and particularly the construction of the acts of Congress of January 20, 1885, and of March 3, 1898, hereinbefore referred

10 to, and the decision of this honorable court was against the title, rights, privileges or exemptions specially accorded to and claimed by your petitioners under such clause of said Constitution, treaty, statute, or commission of the United States.

Fourth. That your petitioners are advised and therefore allege, that by virtue of the matters and facts herein set forth, they are entitled to have this cause heard and their rights and title to share and participate in the distribution of the fund in the hands of your petitioner, Esther S. Buchanan, as administratrix of William B. Buchanan, deceased, said surviving partner, determined by the Supreme Court of the United States on a writ of error directed to this court.

Wherefore your petitioners pray that they may be allowed a writ

of error from the Supreme Court of the United States directed
11 to the court of appeals of Maryland, touching the matters in these proceedings in this petition set forth, and the matter of the title, right, privilege or exemption so as aforesaid accorded to and claimed by your petitioners under the clause of said Constitution, treaty, statute, or commission of the United States, hereinbefore referred to, which has been denied to them by the decree of this honorable court.

Second. And that the decision and decree of this honorable court against your petitioners in the matter herein complained of, may be reversed.

Third. And that your petitioners may have such other and further relief as — their case may be fit and proper.

And this they will ever pray etc.

ARCHIBALD H. TAYLOR,
E. P. KEECH,
HERBERT B. STIMPSON,
Counsel for Petitioners.

12 Filed Feb'y 17th, 1902.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the court of appeals of the State of Maryland, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in said court of appeals of the State of Maryland before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Esther S. Buchanan, administratrix of William B. Buchanan deceased, Esther S. Buchanan, and Wilson Carey Buchanan, appellants and Laura Patterson, Sydney T. Dyer, Elisha Dyer Jr., Virginia A. Smith, executrix of Louis Smith deceased, Mary Coles Carter, Sally Carter, Robert Smith Carter, Carry Ann
13 Fink, Rudolph Fink, Kate Prather Nicholas, Sarah Nicholas, Mary Coles Carter, administratrix *d. b. n. set. a.* of Samuel Smith deceased, Mary Coles Carter administratrix of Peter Carter Smith deceased, Richard P. Buchanan, Esther B. Tyson, James W. Tyson, Laura B. Wainwright, J. Mayhew Wainwright, Clement C. Smith, Eugene Lentilhon Jr., Ellen Buchanan, Marie Buchanan, Charles Buchanan, the unknown next of kin and personal representatives and distributees of Mary B. Smith who married John Mansfield, any and all unknown next of kin and distributees claiming by under or through William B. Buchanan deceased, as the said James A. Buchanan deceased, or the said Samuel Smith deceased, and the unknown personal representatives next of kin and distributees of Hetty Cary Martin and H. Newell Martin, and each of them, both now deceased, and Esther S. Buchanan, administratrix *d. b. n., c. t. a.*, of James A. Buchanan deceased, appellees wherein
14 was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the

decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Esther S. Buchanan administratrix of William B. Buchanan deceased, Esther S. Buchanan and Wilson Carey Buchanan as by their
15 complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief
(Seal's place.) Justice of the United States, the 7th day of
16 February in the year of our Lord one thousand nine hundred and two.

JAS. W. CHEW,
Clerk of the Circuit Court of the United States for the District of Maryland.

Allowed by—
JAS. McSHERRY,
Chief Judge of the Court of Appeals of Maryland.

17 Filed February 17th, 1902.

In the Supreme Court of the United States.

ESTHER S. BUCHANAN ET AL. vs. LAURA PATTERSON ET AL. } From the Court of Appeals of Maryland.

Now comes, Esther S. Buchanan, individually and as administratrix of William B. Buchanan, deceased, and Wilson Cary Buchanan, by Archibald H. Taylor, Edward P. Keech, Junior, and Herbert B. Stimpson, their counsel of record, and assign error in the decree of the court of appeals of Maryland, heretofore on January 30, 1902, entered in these proceedings, as follows:

First. For that by the aforesaid decree of the court of appeals of the State of Maryland, being the highest court of the State of Maryland, wherein a decision in the above proceedings in the matter now complained of, could be had, said court of appeals of Maryland did finally deny to the said Esther S. Buchanan and the said
18 Wilson Cary Buchanan, any and all right, as next of kin of William B. Buchanan, deceased, to share or participate in the distribution of the fund in the hands of said Esther S. Buchanan, as administratrix of William B. Buchanan, deceased, surviving partner of the firm of S. Smith and Buchanan, being the net amount of two French spoliation awards paid to said Esther S. Buchanan as the administratrix of said surviving partner, by the Secretary of the Treasury of the United States, upon the certificate of the Court of Claims of the United States, declaring and adjudicating among other things, that said Esther S. Buchanan as such administratrix, did represent the next of kin of William B. Buchanan, deceased, surviving member, or partner, of the firm of S. Smith and Buchanan, the original owner of said claims, which said certificate was made and issued by said Court of Claims in pursuance of the provisions
19 of an act of Congress approved March 3rd, 1899, by virtue of the terms of which, two certain appropriations were made to said Esther S. Buchanan, administratrix of William B. Buchanan, deceased, "representing Smith and Buchanan," and "who was the last surviving partner of the firm of S. Smith and Buchanan," respectively, by which act Congress did ratify and adopt the findings and decisions of the Court of Claims of the United States made in pursuance of a previous act of Congress approved January 20, 1885, in the two cases of the ship "Patapsco," William Hill, master, No. 2011, and of the ship "Jane," John Wallace, master, No. 381, lately pending therein, and previously reported to Congress in accordance with the terms of said act of January 20, 1885, whereby said Court of Claims did find, adjudicate, decide and report to Congress, among other things, that for the reasons in said report stated, said
20 firm of S. Smith and Buchanan was "an original suffer-" within the meaning of said acts of Congress, and was of right entitled to have from the United States the sums of money afterwards appropriated by Congress for the benefit of said firm, and that said firm was composed of Samuel Smith, James A. Buchanan and William B. Buchanan, all now deceased, of whom the said William B. Buchanan was the survivor; but that notwithstanding the provisions and terms of the aforesaid acts of Congress, and the aforesaid certificates, judgments, decisions, findings and reports of the Court of Claims, said court of appeals of Maryland did declare and finally adjudge and decree, that said firm of S. Smith and Buchanan was composed of Samuel Smith, and James A. Buchanan, only, and that said William B. Buchanan was not a member of said firm, and was not an "original sufferer" within the meaning of the acts of Congress referred to, and that
21 said Esther S. Buc-anan and Wilson Cary Buchanan, the next of kin of William B. Buchanan, deceased, were not entitled, as such, to share or participate in the distribution of the

aforesaid fund, and did finally direct and decree the distribution of the same among the next of kin of Samuel Smith, deceased, and of James A. Buchanan, deceased, thus excluding the next of kin of William B. Buchanan, deceased, as such, from the distribution of said fund, contrary to the terms and provisions of the acts of Congress aforesaid, and the acts, judgments, decrees and decisions of the Court of Claims of the United States, and the title, rights, privileges and exemptions accorded to and claimed by the next of kin of William B. Buchanan, deceased, thereunder.

Second. For that by the aforesaid decree of the court of appeals of the State of Maryland, being the highest court of the State
22 of Maryland, wherein a decision in the above proceedings, in the matter now complained of, could be had, said court of appeals of Maryland did finally deny to the said Esther S. Buchanan and to the said Wilson Cary Buchanan, any and all right, as next of kin of William B. Buchanan, deceased, to share or participate in the distribution of the fund in the hands of said Esther S. Buchanan, administratrix of William B. Buchanan, deceased, surviving partner of the firm of S. Smith and Buchanan, in proportion to the interest of their said ancestor, William B. Buchanan, deceased, in the property of said firm of S. Smith an- Buchanan, contrary to the title, rights, privileges and exemptions accorded to and claimed by said Esther S. Buchanan and said Wilson Cary Buchanan, as next of kin of said William B. Buchanan, deceased, under the said act of Congress of March 3, 1899, by virtue of which said moneys
23 were paid to said Esther S. Buchanan as administratrix of William B. Buchanan, deceased, surviving partner of the firm of S. Smith and Buchanan, as in the record in these proceedings more particularly mentioned and set forth.

Third. For that by the aforesaid decree of the court of appeals of the State of Maryland, being the highest court of said State of Maryland, wherein a decision, in the above proceeding, in the matter now complained of, could be had, said court of appeals of Maryland, did finally deny to the said Esther S. Buchanan, and to the said Wilson Cary Buchanan, any and all right, as next of kin of William B. Buchanan, deceased, to share or participate in the distribution of the fund in the hands of said Esther S. Buchanan, administratrix of William B. Buchanan, deceased, surviving partner of the firm of S. Smith and Buchanan, in proportion to the interest of their said an-
24 cestor, William B. Buchanan, deceased, in the property of said firm of S. Smith and Buchanan, contrary to the findings, decisions, judgments and decrees of the Court of Claims in the two causes in the first assignment of error referred to, which court was, by the terms and provisions of said two acts of Congress, of January 20, 1885, and of March 3, 1899, respectively, vested with full and sole power, authority and jurisdiction to hear, determine, report and adjudicate upon the matters and things therein referred to, and particularly, among others, the matters and things in said first assignment of error set forth, in pursuance of which exclusive duty, power, authority and jurisdiction, so as aforesaid conferred upon said Court of Claims, said matters and things were, among others, decided, de-

termined and adjudicated by said Court of Claims, and said sums of money were directed by Congress out of its bounty to be paid to said Esther S. Buchanan as administratrix of William B.
25 Buchanan, deceased, surviving partner of the firm of S. Smith and Buchanan, as in the record in these proceedings more particularly mentioned and set forth, and contrary to the right, title, privileges and exemptions accorded to and claimed by said Esther S. Buchanan and said Wilson Cary Buchanan, as next of kin of William B. Buchanan, deceased, thereunder.

Wherefore said Esther S. Buchanan, individually, and as administratrix of William B. Buchanan, deceased, and Wilson Cary Buchanan, pray that said final judgment and decree of said court of appeals of Maryland be reversed, and that the error herein complained of may be rectified.

And that they may have such other and further relief as to their case may be necessary.

And this they will ever pray, etc.

ARCHIBALD H. TAYLOR,
EDWARD P. KEECH, JR.,
H. B. STIMPSON,
Solicitors.

26 Filed February 17th, 1902.

UNITED STATES OF AMERICA, *ss:*

To Laura Patterson, Sidney T. Dyer and Elisha Dyer, Junior, her husband; Virginia A. Smith, executrix of J. Louis Smith, deceased; Mary Coles Carter, Sally Carter, Robert Smith Carter, Cary Ann Fink and Rudolph Fink, her husband; Kate Prather Nicholas, Sarah Nicholas, Mary Coles Carter, administratrix *d. b. n., c. t. a.*, of Samuel Smith, deceased; Mary Coles Carter, administratrix of Robert Carter Smith, deceased; Richard P. Buchanan, Esther B. Tyson and James W. Tyson, her husband; Laura B. Wainwright and J. Mayhew Wainwright, her husband; Eugene Lentilhon, Junior; Clement C. Smith, Ellen Buchanan, Marie Buchanan, Charles Buchanan, the unknown next of kin and personal representatives and distributees of Mary B. Smith, who married John Mansfield; any and all unknown next of kin and distrib-
27 utees claiming by, under, or through the said William B. Buchanan, deceased, or the said James A. Buchanan, deceased, or the said Samuel Smith, deceased, and the unknown personal representatives, next of kin, and distributees of Hetty Cary Martin and H. Newell Martin and each of them, both now deceased, and Esther S. Buchanan, administratrix *d. b. n., c. t. a.*, of James A. Buchanan, deceased, Greeting:

You and each of you are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the court of appeals of the State of Maryland, wherein Esther S. Buchanan, individually, and as adminis-

tratrix of William B. Buchanan, deceased, and Wilson Cary Buchanan, are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered
28 against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable James McSherry, chief judge of the court of appeals of Maryland, this seventh day of February, in the year of our Lord one thousand nine hundred and two.

JAS. McSHERRY,
Chief Judge of the Court of Appeals of Maryland.

Service of copy of within citation is hereby admitted.

A. W. MACHEN,
ARTHUR W. MACHEN, JR.,
Solicitors for Laura Patterson, Sidney T. Dyer and Elisha Dyer, Junior, Her Husband.

February 7th, 1902.

FRANK P. CLARK,
29 *Solicitor for Mary Coles Carter, Sally Carter, Robert Smith Carter, Cary Ann Fink and Rudolph Fink, Her Husband; Kate Prather Nicholas and Sarah Nicholas, Virginia A. Smith, Executrix of James Smith, Deceased; Mary Coles Carter, Adm. d. b. n., c. t. a., of Samuel Smith, Deceased; Mary Coles Carter, Admr. of Robert Carter Smith, Deceased.*

February 7th, 1902.

D. ESTE FISHER,
Solicitor for Laura B. Wainwright and J. Mayhew Wainwright, Her Husband.

February 7th, 1902.

ESTHER S. BUCHANAN,
Administratrix d. b. n., c. t. a., of James A. Buchanan, Deceased, in Proper Person.

February 7th, 1902.

FRANK P. CLARK,
Solicitor for Charles Buchanan and Eugene Lentilhon, Jr., Infant Defendants, under Order of Court.

Feb'y 8, 1902.

30 STATE OF MARYLAND, } *To wit:*
City of Baltimore, }

I hereby certify that on this thirteenth day of February, 1902, there personally appeared before the subscriber a notary public of the State of Maryland in and for the city of Baltimore aforesaid, Edward L. Bash, and he made oath in due form of law that he did on said thirteenth day of February 1902, deliver a true copy of within citation to Marie Buchanan, one of the persons to whom the same is addressed, as therein appears.

EDWARD L. BASH.

Subscribed and sworn to before the undersigned the day and year first above written.

As witness my hand and notarial seal.

(Seal's place.) HARRY L. PRICE,
Notary Public.

31 Record. No. —.

In the Court of Appeals of Maryland.

LAURA PATTERSON, SIDNEY T. DYER and ELISHA DYER, JR., Her Husband,
vs.
ESTHER S. BUCHANAN, Adm'x, and Others.

J. LOUIS SMITH and Others
vs.
SAME.

Two appeals in one record from the circuit court No. 2 of Baltimore city.

Filed August 8th, 1900.

A. W. Machen, Arthur W. Machen, Jr., Frank P. Clark, for appellants.

Taylor & Keech, H. B. Stimpson, D. K. Este Fisher, for appellees.

32 Two appeals in one record from the circuit court No. 2 of Baltimore city.

Bill of Complaint.

(Filed 17th August, 1899.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN, an Individual; ESTHER S. BUCHANAN, Administratrix of the Estate of William B. Buchanan, Deceased, Last Surviving Partner of S. Smith and Buchanan, and Esther S. Buchanan, Administrator *d. b. n., c. t. a.*, of James A. Buchanan, Deceased, Complainants,

versus

WILSON C. BUCHANAN, RICHARD P. BUCHANAN, ESTHER B. TYSON and James W. Tyson, Her Husband; Laura B. Wainwright and J. Mayhew Wainwright, Her Husband; Eugene Littlehorn, Jr., an Infant; Clement C. Smith, Ellen Buchanan, Marie Buchanan, Charles Buchanan, an Infant; Robert Carter Smith, Administrator *d. b. n., c. t. a.*, of Samuel Smith, Deceased; Robert Carter Smith, an Individual; Sally Carter, Mary Coles Carter, Robert Smith Carter, Cary Ann Fink and Rudolph Fink, Her Husband; Kate Prather Nicholas, Sarah Nicholas, Sidney Dyer and Elisha Dyer, Jr., Her Husband; Laura Patterson, J. Louis Smith, the Unknown Next of Kin and Personal Representatives and Distributees of Mary B. Smith,
33 Who Married John Mansfield; Any and All Unknown Next of Kin and Distributees Claiming by, under, or through the said William B. Buchanan, Deceased, or of the said James A. Buchanan, Deceased, or the said Samuel Smith, Deceased, and the — Unknown Personal Representatives, Next of Kin, and Distributees of Hettie Cary Martin and H. Newell Martin and Each of Them, Now Both Deceased, Defendants.

Bill of Complaint.

To the Honorable Henry Stockbridge, the judge of said court:

Your oratrix, Esther S. Buchanan, individually and as administratrix of the estate of William B. Buchanan, deceased, and as administratrix *d. b. n. c. t. a.* of James A. Buchanan, deceased, by Taylor and Keech, her solicitor-, now files this, her bill of complaint against the defendants herein named, and complaining shows to your honor:

First. That your oratrix is the daughter of the late William B. Buchanan, deceased, and that she has heretofore been appointed administratrix of his estate by the orphans' court of Baltimore city, as appears from a certified copy of the letters of administration issued to her, and herewith filed, marked "Complainants' Exhibit A."

Second. That your oratrix's decedent the said William B. Buchanan, during his lifetime was a member of the firm of S. Smith &

Buchanan, of this firm the other members were Samuel Smith and James A. Buchanan, father of said William B. Buchanan, both of whom are now deceased; and that the said William B. Buchanan did outlive his said copartners, and was the last surviving member of said firm or copartnership of S. Smith & Buchanan.

Third. That heretofore by an act of Congress of January 20th, 1885, the Congress of the United States referred to the Court of Claims of the United States, the ascertainment of claims of American citizens for spoiliations committed by the French prior to July 31st, 1801 and that in pursuance of said act of Congress and as administratrix of the said William B. Buchanan the last surviving member of said firm of S. Smith and Buchanan, your oratrix did present and urge before said Court of Claims on behalf of said firm certain claims of the class described in said act and commonly known as "French spoiliation claims;" and that upon the finding of said Court of Claims, Congress, by act of March 3rd, 1899, did make an appropriation to pay certain of said claims, and among others did award to your oratrix two claims in term- following:

34 "On the ship Jane, John Wallace, master, Esther S. Buchanan, administratrix, representing Smith and Buchanan..... $11,660 20

"On the ship Patapsco, William Hill, master, Esther S. Buchanan, administratrix of William B. Buchanan, who was the surviving partner of the firm of S. Smith & Buchanan, deceased..... 25,056 00

the value of the cargo shipped by said firm."

And that said moneys have been paid over to your oratrix as administratrix of the estate of William B. Buchanan, deceased, amounting in the total to..... $36,716 21

Fourth. And that as appears from the administration account of your oratrix, heretofore passed by your oratrix in the orphans' court of Baltimore city, a certified copy of which is herewith filed, marked "Complainants' Exhibit B" your oratrix has in her hands for distribution among the persons properly entitled to the same the sums of $22,629.47, after the payment of all costs and charges incidental to the collection of said fund, and the costs in the orphans' court of Baltimore city, wherein said administration was had as aforesaid.

Fifth. That under the acts of Congress relative to the same and the decisions of the Supreme Court of the United States, of the Court of Claims of the United States, and of other tribunals before which causes involving questions concerning the distribution of such claims and funds as the present have come, your oratrix is advised that she holds said fund for the benefit of and for distribution among, not only the next of kin, of her own decedent, the said William B. Buchanan, but also the next of kin of the other partners of said firm of S. Smith & Buchanan, to wit: Samuel Smith and James A. Buchanan, in the proportions and according to the laws of distribution which your honor may hold to be proper in this cause.

Sixth. That Robert Carter Smith has heretofore been appointed administrator *d. b. n. c. t. a.* of Samuel Smith deceased, by the orphans' court of Baltimore city, and that your oratrix has heretofore been appointed administratrix, *d. b. n. c. t. a.* of James A. Buchanan, deceased.

Seventh. That the next of kin of the said Willam B. Buchanan living at the date of the passage of the act of Congress directing the payment of the above-mentioned claims, to wit: March 3rd, 1899, were and are now, your oratrix Esther S. Buchanan and her brother Wilson C. Buchanan who now resides in the city of Columbus, State of Ohio, who are the only surviving children of the said William B. Buchanan.

Eighth. That the next of kin of the said James A. Buchanan deceased, living at the date of the passage of the act of Congress, directing the payment of the above-mentioned claim, to wit: March 3rd, 1899, were and are now, as follows:

The said James A. Buchanan had numerous children all of whom are now dead and of whom only two died leaving issue or descendants. These were

35 1. William B. Buchanan the father of your oratrix, now deceased, who left two children.

(*a.*) Your oratrix Esther S. Buchanan.

(*b.*) One son Wilson C. Buchanan, hereinbefore mentioned—now deceased.

2. Robert Buchanan who had issue as follows:

(*a.*) James A. Buchanan, the younger, a son who married and died leaving issue as follows:

1. Richard P. Buchanan who is now living in Cincinnati, in the State of Ohio.

2. Esther Buchanan, a daughter, who married and is now the wife of James W. Tyson, both of whom are now living at South Stafford, in the State of Vermont.

3. Laura Buchanan, a daughter, who married and is now the wife of J. Mahew Wainright both of whom are now living at Rye-on-the-Sound, Long Island, in the State of New York.

4. Rosa Buchanan, a daughter, now deceased, who married Eugene Lentilhon and who died leaving surviving her one son Eugene Lentilhon, Jr. an infant who is now living with his father at Bay Shore, Long Island, in the State of New York.

(*b.*) Eliza Buchanan, a daughter of Robert Buchanan, now deceased who married —— Smith, and who died leaving surviving her one son Clemment C. Smith, now living at Wheeling, in the State of West Virginia.

(*c.*) Ellen Buchanan a daughter of Robert Buchanan, who is now living unmarried at Bay Shore, Long Island, in the State of New York.

(*d.*) William M. Buchanan, a son of Robert Buchanan, now deceased, who married and died leaving surviving him two children.

1. Marie Buchanan, a daughter, now residing in Baltimore city, in the State of Maryland.

2. Charles Buchanan, a son an infant, now residing in the city of Baltimore.

Ninth. That the next of kin of the said Samuel Smith, deceased, living at the date of the passage of the act of Congress, directing the payment of the above-mentioned claims, to wit: March 3rd 1899, were and are now according to the information and belief of your oratrix, as follows:

Samuel Smith married Margaret Spear both of whom are now deceased, and he left five children.

1. John Spear Smith, a son, who married Cary Ann Nicholas by whom he had seven children, Margaret, Samuel, Mary, Louis, Robert Carter, Wilson Cary and Thomas Jefferson.

2. Louis Smith the son of Samuel Smith died without issue.

3. Laura Smith, the daughter of Samuel Smith, married Christopher Hughes, to whom were born Charles and Margaret, both of whom died without issue.

4. Sidney Smith, a daughter, married Edward Patterson,
36 now both deceased, to whom were born six children, Samuel, Edward, Robert, Margaret, Sidney and Laura.

5. Mary B. Smith, a daughter of Samuel Smith, married John Mansfield, and with her said husband removed from this country to England, and there died. According to the information of your oratrix, said Mary B. Smith Mansfield, had eleven children, James John Smith, Margaret, Samuel, Charlotte, Henrietta, William, Rose, Emily, Horatio, Isabella and Charles Edward whether or not said Mary B. Smith Mansfield had any other children, and whether any of the above-named children are now living or if dead whether they have left descendants your oratrix has no information, and no means of ascertaining.

(*a.*) Margaret, daughter of John Spear Smith married Robert H. Carter, to whom were born three daughters, Mary Coles Carter and Sally Carter, now living in Catonsville, Baltimore county, Maryland, Margaret, now deceased, and one son, Robert Smith Carter, who is now living at Hopkinsville, in the State of Kentucky.

(*b.*) Samuel Smith, son of John Spear Smith, Wilson Cary Smith, son of John Spear Smith, Thomas Jefferson Smith, son of John Spear Smith, died without issue.

(*c.*) Mary Smith, daughter of John Spear Smith married Samuel Nicholas, both of whom are now deceased, she had three children, Cary Ann Nicholas, who married Rudolph Fink, and is now living with her husband at Crescent Hill, Jefferson county, Kentucky, Kate Prather Nicholas, and Sarah Nicholas, both of whom are now living at Catonsville, Baltimore county, Maryland.

(*d.*) J. Louis Smith, son of John Spear Smith married Jane Kerr, both of whom are now living at Topping, in the State of Virginia.

(*e.*) Robert Carter Smith, son of John Spear Smith is now living at Catonsville, Baltimore county, Maryland.

(*f.*) Samuel, Edward and Robert, sons, and Margaret, daughter of Sidney Patterson, and Edward, her husband, died without issue.

(*g.*) Sidney, daughter of Edward Patterson and Sidney his wife, married William Turner, and died, leaving one daughter, Sidney

Turner, who is now the wife of Elisha Dyer, Jr., both of whom are now living at Newport in the State of Rhode Island.

(*h.*) Laura Patterson, daughter of Edward Patterson and Sidney, his wife, is now living unmarried, in the city of Baltimore.

Tenth. That your oratrix is informed that both James A. Buchanan and Samuel Smith, deceased, left wills: but your oratrix is advised and therefore alleges that the distribution of said fund under the terms of the act of Congress making the appropriation for the payment of said claims, is to be made directly among the nearest of kin of the respective sufferers living at the date of the appropriation, to wit: March 3rd, 1899, irrespective of the fact tha the sufferers may have left a will.

Eleventh. That your oratrix is informed, and does verily believe that the persons herein named, are all of the next of kin of
37 Samuel Smith and William B. Buchanan, all deceased, living at the time of the passage of the act of Congress aforesaid although there may be other persons unknown to your oratrix who may lay claim on your oratrix to participate in the distribution of said fund, and that your oratrix is in doubt as to the proportion in which said beneficiaries should properly participate in the respective shares of their ancestors in said fund.

Twelfth. That according to the information and belief of your oratrix, the said Samuel Smith, James A. Buchanan and William B. Buchanan, were equal copartners, but a claim has been made on your oratrix by Robert Carter Smith one of the distributees of Samuel Smith, and a party defendant herein, wherein he asserts that his ancestor, the said Samuel Smith, had a one-half interest in the property of said copartnership, and that therefore, the next of kin of the said Samuel Smith are entitled to have for distribution among them, one-half of the fund now in the hands of your oratrix for distribution; but your oratrix is informed and does verily believe that distribution of said fund should be made in three equal parts among the next of kin of the three partners in said firm of S. Smith and Buchanan.

Thirteenth. That according to the information of your oratrix her brother, Wilson C. Buchanan, one of the beneficiaries participating in said fund, and one of the defendants in these proceedings, made an assignment of his interest in said claim, previous to the passage of said act of Congress directing the payment of the same, to wit: March 3d, 1899, to Mrs. Hetty Cary Martin, wife of H. Newell Martin and that the said Mrs. Hetty Cary Martin died some years ago, and that subsequent to her death, her husband, the said H. Newell Martin, filed in the orphans' court of Baltimore city, his petition, alleging the death of his wife, without issue and leaving no debts, and praying that all of her personal property might devolve upon him in accordance with the act of assembly in such cases made and provided, and that thereupon the said orphans' court of Baltimore city, after due proceedings, did pass its final order directing that the title to all the personal property of Mrs. Hetty Cary Martin devolve and pass to her husband, the said H. Newell Martin; and that subsequent to that time, the said H. Newell Martin

removed from this country to England and there died, before the 3rd day of March, 1899; and that your oratrix does not know whether title to the interest of the said Wilson C. Buchanan in said fund ever passed under said assignment to the said Hetty Cary Martin under the terms of the act of Congress for the payment of said claims; and if so she does not know whether title to the same ever passed to the said H. Newell Martin by virtue of the order of the orphans' court hereinbefore referred to; your oratrix is also in doubt as to the name or names of the persons who may in law be vested with title to the same, and authorized to assert said assignment against the portion of the fund now in her hands distributable to the said Wilson C. Buchanan, and your oratrix therefore, for her own protection desires to make parties defendant to this bill the unknown personal representatives, next of kin and distributees of H. Newell Martin and Hetty Cary Martin, both deceased.

38 Ninth. And that by reason of the facts hereinbefore set forth your oratrix is in doubt to whom and in what proportions she should pay and distribute the sum of money in her hands as aforesaid, and she is advised and therefore alleges, that a distribution of the same can only be had under the order of a court of equity in a manner adequate to insure her own protection in the future.

To the end therefore:

1. That this honorable court will assume jurisdiction of the fund in the hands of your oratrix as administratrix as herein set forth and that it will direct and supervise the distribution of the same among the parties whom the court may find to be entitled to participate therein according to the proportion and rule which this court may declare to govern the same.

2. And for such other further relief, &c.

May it please your honor to grant unto your oratrix a writ of subpœna addressed to Marie Buchanan of Baltimore city, Charles Buchanan, an infant, of Baltimore city, Mary Coles Carter and Sallie Carter, both of Baltimore county, Kate Prather Nicholas and Sarah Nicholas both of Baltimore county, Robert Carter Smith of Baltimore county, Robert Carter Smith administrator *d. b. n. c. t. a.* of Samuel Smith, deceased, and Laura Patterson of the city of Baltimore, and also to grant to your oratrix an order of publication against Wilson C. Buchanan of Columbus, in the State of Ohio, Richard P. Buchanan of Cincinnati, in the State of Ohio, Esther B. Tyson and James W. Tyson, her husband of South Stafford, in the State of Vermont, Laura B. Wainwright and J. Mayhew Wainwright her husband, of Rye-on-the-Sound, Long Island in the State of New York, Eugene Lentilhon, Jr., an infant of Bay Shore, Long Island, in the State of New York, Clemment C. Smith of Wheeling in the State of West Virginia, Ellen Buchanan of Bay Shore Long Island, in the State of New York, Robert Smith Carter of Hopkinsville, in the State of Kentucky, Cary Ann Fink and Rudolph Fink, her husband of Jefferson county in the State of Kentucky, J. Louis Smith of Topping, in the State of Virginia, next of kin and the unknown personal representatives and distributees of Mary B. Smith a

daughter of Samuel Smith, who married John Mansfield and removed to England, Sidney Dyer and Elisha Dyer Jr. her husband of Newport in the State of Rhode Island, and any and all unknown next of kin and distributees, claiming by, under or through the said William B. Buchanan, deceased, or the said James A. Buchanan, deceased, or the said Samuel Smith, deceased, and the unknown personal representatives, distributees and next of kin of Hetty Cary Martin and H. Newell Martin and each of them, both now deceased, commanding and giving notice to them and each of them to be and appear in this honorable court on a day or days certain to be named therein to show cause, if any they have, why a decree should not be passed as prayed.

As in duty bound etc.

ESTHER S. BUCHANAN, *Adm'x.*

Witness:
C. D. McCAULEY.

[SEAL.]

TAYLOR & KEECH,
Solicitors for Complainant.

39 STATE OF MARYLAND, *County of Washington,* } *To wit:*

I hereby certify that on the twelfth day of August, 1899, there personally appeared before the subscriber, a notary public of the State of Maryland, in and for the county aforesaid, Esther S. Buchanan, the complainant named in the aforegoing bill of complaint, and she did make oath in due form of law that the matters and facts therein contained are true to the best of her knowledge and belief.

As witness my hand and notarial seal.

C. D. McCAULEY, *N. P.*

COMPLAINANTS' EXHIBIT A.

(Filed with bill of complaint.)

THE STATE OF MARYLAND, *Baltimore City,* } *sc:*

The subscriber, register of wills for Baltimore city, doth hereby certify that it appears by the records in his office that letters of administration, of all the goods, chattels, credits and personal estate of William B. Buchanan, deceased, was on the twenty-fifth day of May, in the year of our Lord one thousand eight hundred and eighty-five, granted and committed unto Esther S. Buchanan, who was then and there appointed administratrix of said deceased.

Bond $74,000.00. Said letters are still in force and unrevoked.

(Large seal.) In testimony whereof, I hereunto subscribe my name and affix the seal of my office, this eleventh day of August, in the year of our Lord, eighteen hundred and ninety-nine.

Test:

STEPHEN R. MASON,
Register of Wills for Baltimore City.

COMPLAINANTS' EXHIBIT B.

(Filed with bill of complaint.)

BALTIMORE CITY, *sct:*

The First Account of Esther S. Buchanan, Administratrix of William B. Buchanan, Deceased.

This accountant charges herself, with the amount of French spoliation claims under act of Congress of Mc'h 4, 1899, paid to her as administratrix of William B. Buchanan, deceased, last surviving partner of Smith and Buchanan,

40	Arising out of ship "Jane" Wallace, master	11,660 21	
	Arising out of ship "Patapsco" (Wm. Hill, master)	25,056 00	
			$36,716 21

And she craves allowance as follows:

Letters, &c	3 60	
Certificate stamp, &c	4 33	
Frank P. Clark and J. E. Sunnus pr. order ct. Oct. 12, '85	12,233 74	
Register's fees for this ac., copy order ct., &c.	5 75	
Taylor & Keech prof. services as per order of ct	100 00	
This accountant's com. on $20,000.00, @ 7%	1,400 00	
This accountant's com. on $16,716.21, @ 2%	334 32	
Payments, &c	$14,086 74	
Balance due the estate in cash	22,629 47	
Estate accounted for	$36,716 21	

BALTIMORE CITY, *ss:*

On this 27th day of July, 1899, came Esther S. Buchanan, adm'x of William B. Buchanan, and made oath on the Holy Evangely of Almighty God that the aforegoing account is just and true as stated and that she has paid or secured the payment of every sum or sums of which she craves an allowance, which after examination, is passed by order of the orphans' court.

Test: STEPHEN R. MASON,
Register of Wills for Baltimore City.

STATE OF MARYLAND, } ss:
Baltimore City,

I, Stephen R. Mason, register of wills, and by law, keeper of the seal and of the records of the original papers of the orphans' court for Baltimore city, do hereby certify, that the aforegoing is a true and full copy of the first administration account of William B. Buchanan, late of said city, deceased, taken from the original filed and kept in the office of register of wills for Baltimore city.

In testimony whereof I hereunto subscribe my name and
[L. S.] affix the seal of said court and office this 28th day of July, in the year of our Lord eighteen hundred and ninety-nine.

STEPHEN R. MASON,
Register of Wills for Baltimore City.

41 COMPLAINANTS' EXHIBIT C.

(Filed with bill of complaint.)

STATE OF MARYLAND, } sc:
Baltimore City.

The subscriber, register of wills for Baltimore city, doth hereby certify that it appears by the records in his office that letters of administration, *de bonis non* with the will annexed of all the goods, chattels, credits and personal estate of James A. Buchanan, deceased, was on the twenty-third day of March in the year of our Lord one thousand eight hundred and ninety-one granted and committed unto Esther S. Buchanan who was then and there appointed administratrix *de bonis non* with the will annexed of the said deceased.

Bond $11,000.00. Said letters are still in force and unrevoked.

In testimony whereof I hereunto subscribe my name and
[L. S.] affix the seal of my office this eleventh day of August in the year of our Lord eighteen hundred and ninety-nine.

Test:

STEPHEN R. MASON,
Register of Wills for Baltimore City.

17th August, 1899, subpœna issued for resident defendants.
17th August, 1899, order of publication against non-resident defendants filed and copy issued for publication.

Answer of Defendants Robert Carter Smith, Adm'r, &c., and Others.

(Filed 26th September, 1899.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON C. BUCHANAN ET AL.

To the honorable the judge of said court:

The joint and several answers of Robert Carter Smith, administrator *d. b. n., c. t. a.*, of Samuel Smith, deceased; Robert Carter Smith, an individual; Sallie Carter, Mary Coles Carter, Robert Smith Carter, Cary Ann Fink and Rudolph Fink, her husband; Kate Prather Nicholas, Sarah Nicholas, and J. Louis Smith, defendants in this cause, to the bill of complaint of Esther S. Buchanan and others against them and others in this honorable court exhibited.

The defendants answering say*ing:*

1. That they admit the facts set out in the first clause of the said bill.

2. That they admit the facts set out in the second clause of the said bill.

42 3. That they admit the facts set out in the third clause of the said bill.

4. That they admit the facts set out in the 4th clause of the said bill.

5. That they deny that *under* the acts of Congress and decisions of the courts touching the subject of the distribution of the fund in the complainants' hands referred to in the 5th clause of the said bill are susceptible of the construction placed upon them by the complainant, to wit: That it is her right and duty to distribute to the next of kin of Samuel Smith, deceased, such portion of the said fund as may be by the court awarded to them; on the contrary your respondents respectfully insist that it is her duty to pay over the same to Robert Carter Smith, the administrator *d. b. n. c. t. a.* of Samuel Smith, who holds his appointment under and by virtue of an order of the orphans' court of Baltimore city as will appear from his letters of administration which is herewith filed marked Respondents' Exhibit A, to be by him distributed under the orders of the said orphans' court of Baltimore city to such persons as may be entitled thereto.

6. That they admit the facts set out in the 6th clause of the said bill.

7. That they neither admit nor deny the facts set out in the 7th clause of the said bill having no knowledge upon the subject.

8. That they neither admit nor deny the facts set out in the 8th clause of the said bill having no knowledge upon the subject.

9. That they admit the facts set out in the 9th clause of the said bill.

10. That they admit that both James A. Buchanan and Samuel Smith, deceased, left wills, but they deny that the fund in the hands of the complainant is distributable to the "nearest of kin of the respective sufferers living at the date of the appropriation" but they contend that so much of the said fund as may be coming to those who claim under Samuel Smith, deceased, must be paid over to Robert Carter Smith, administrator, *d. b. n. c. t. a.* of Samuel Smith, deceased, to be distributed by him under the order and direction of the orphans' court of Baltimore city, nor are your respondents prepared to admit that the expression "nearest of kin" is equivalent to the language used in the act of appropriation, to wit: the act approved March 3rd 1899, which language is as follows:—The award shall be made on behalf of the "next of kin" your respondents not being prepared to admit the expression "nearest of kin" is the equivalent of that of "next of kin."

11. That they neither admit nor deny the facts set out in the 11th clause of the said bill.

12. That in answer to the 12th clause of said bill respondents say that they expect to be able to prove in this cause that Samuel Smith, deceased, was the owner of one-half interest in the firm of Samuel Smith and Buchanan, and that the interest of James A. Buchanan and William B. Buchanan was the remaining one-half interest; this your respondents upon information and belief allege and shall ask for a decree in this cause directing the fund to be so distributed.

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13. That they neither admit nor deny the facts set out in the 13th clause of the said bill.

Wherefore these defendants pray that a decree may be entered in this cause in accordance with the claim set up in this answer and that they be allowed their reasonable costs and charges in this behalf sustained.

And as in duty bound &c.

FRANK P. CLARK,
JOHN SEMMES,
Solicitors for Defendants.

ROBERT CARTER SMITH.

STATE OF MARYLAND, } ss:
Baltimore County, }

I Harry L. Chase a notary public of the State of Maryland in and for Baltimore county, do hereby certify that there personally appeared before me on this twenty-second day of September, 1899, Robert Carter Smith, personally known to me, who made oath in due form of law that the matters and facts set forth in the foregoing answer are true to the best of his knowledge and belief.

[L. S.]

HARRY L. CHASE,
Notary Public.

Answer of Defendants Laura Patterson and Others.

(Filed 9th December, 1899.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON C. BUCHAN- ET AL.

The joint and several answer of Laura Patterson and Sidney Turner Dyer and Elisha Dyer, Jr., her husband, defendants, to the bill of complaint of Esther S. Buchanan, Esther S. Buchanan administratrix, *d. b. n., c. t. a.*, of James A. Buchanan, deceased, against them and other defendants in this court exhibited.

1. These defendants answering say that they believe the matters and things stated in the first, second, third, fourth, fifth, and sixth paragraphs of said bill of complaint to be true.

2. These respondents do not admit that the said Samuel Smith, James A. Buchanan and William B. Buchanan were equal copartners in said firm of S. Smith and Buchanan as in the twelfth paragraph of said bill alleged; but upon creditable information aver that the said Samuel Smith was the owner of a full one-half interest in the said firm and that the other two copartners, to wit: James A. Buchanan and William B. Buchanan together owned the other one-half interest therein.

3. These respondents admit that the said Samuel Smith, who died in or about the year 1839, had five children as stated in the ninth paragraph of the said bill, one of whom was a daughter named Sidney, who intermarried with Edward Patterson, and that of the six children of the said marriage who are named in the bill, four, namely Robert Patterson, Margaret Turner, Edward Patterson, Jr., and Samuel Smith Patterson died before the passage of the said act of Congress, approved March 3rd, 1899, and without leaving any issue; that the said Sidney, daughter of the said Mrs. Sidney Patterson and granddaughter of the said Samuel Smith, died in the lifetime of her mother, leaving as her only issue, one child, Sidney Smith Turner, who has intermarried with Elisha Dyer, Jr., and is one of these respondents. And that the said Mrs. Sidney Patterson, daughter of the said Samuel Smith, died in the year 1879, and the respondent, Laura Patterson, is her only now living child; and the said Laura Patterson and Sidney Turner Dyer are the only descendants of the said Mrs. Sidney Patterson now living, or living at the time of the passage of the said act of Congress of March 3rd, 1899.

4. These respondents further admit that the defendant, Robert Carter Smith is a son of John Spear Smith who was one of the children of the said Samuel Smith, and that Mary a daughter of the said Samuel Smith intermarried with John Mansfield, and went to England to reside.

5. These respondents admit that the fund in the said bill mentioned is distributable to the next of kin of the several members of the said firm of S. Smith and Buchanan, living at the date of the appropriation or passage of the act of Congress aforesaid, and should be paid and distributed to and among them according to their respective shares by the said plaintiff.

6. And these respondents pray that the said fund may be distributed according to law in this cause and that in such distribution due regard may be had to the legal rights of them the said Laura Patterson and Sidney Turner Dyer, respectively.

And these respondents pray to be allowed their reasonable costs.

A. W. MACHEN,
ARTHUR W. MACHEN, JR.,
Sol'rs for Respondents.

Petition of Plaintiff for Appointment of Guardian ad Litem for Charles Buchanan and Eugene Lentilhon, Jr., Infant Defendants, and Order of Court Thereon.

(Filed 15th December, 1899.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON C. BUCHANAN ET AL.

To the Honorable Henry Stockbridge, judge of said court:

The petition of the complainant herein respectfully shows unto your honor:

45 That among the parties to the above-entitled cause are Charles Buchanan, of the city of Baltimore, who has been duly summoned herein, and Eugene Lentilhorn Jr., of Bay Shore, Long Island, in the State of New York, against whom an order and notice of publication has been duly published in accordance with its terms, and that both of said defendants are infants, under the age of twenty-one years, and by reason of such infancy, they and each of them are unable to appear in this suit and make answer to the bill herein.

Wherefore your petitioner prays your honor to pass an order appointing a guardian *ad litem* for said minor defendants, with power to act for them in the prosecution of this cause.

And for such other and further relief.

And as in duty bound etc.

TAYLOR & KEECH,
Solicitors for Petitioner.

Order of Court on Aforegoing Petition.

(Filed 15th December, 1899.)

Ordered by the circuit court No. 2 of Baltimore city this 15th day of December, 1899, on the foregoing petition, that George W. Spicer,

Esquire, be, and he is hereby appointed guardian *ad litem* in the above-entitled cause, of Charles Buchanan, of the city of Baltimore, and of Eugene Lentelhon, Jr., of Bay Shore, Long Island, in the State of New York, both of whom are infant defendants therein, with power to appear in said cause for said infants and make answer to the bill of complaint in their names.

HENRY STOCKBRIDGE.

Answer of Charles Buchanan and Eugene Lentelhorn, Jr., Infant Defendants, by George W. Spicer, Their Guardian ad Litem.

(Filed 15th December, 1899.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON C. BUCHANAN ET AL.

The answer of Charles Buchanan and Eugene Lentelhon Jr., infant defendants in the above-entitled cause by George W. Spicer, Esquire, their guardian *ad litem* to the bill of complaint in said cause, respectfully shows:

That being infants they can neither admit nor deny the allegations of said bill of complaint and they therefore demand strict proof thereof and submit their rights to the protection of this honorable court.

GEORGE W. SPICER,
Guardian ad Litem.

46 *Decree Pro Confesso Against Certain Defendants.*

(Filed 15th December, 1899.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON C. BUCHANAN ET AL.

The following-named defendants, that is to say: Wilson C. Buchanan, Richard P. Buchanan, Esther B. Tyson, James W. Tyson, Laura B. Wainwright, J. Mahew Wainwright, Clement C. Smith, Ellen Buchanan, Marie Buchanan, the unknown next of kin, personal representatives of Mary B. Smith, who married John Mansfield, any and all unknown next of kin and distributees claiming by under or through William B. Buchanan or James A. Buchanan, deceased, or Samuel Smith, deceased, and the unknown personal representatives, next of kin and distributees of Hetty Cary Martin, and H. Newell Martin, both now deceased, and each of them, having been duly summoned, or by order of publication, notified to appear to the bill of complaint in these proceedings, and having failed to appear thereto according to the exigency of the writ and notice given to them:

It is thereupon this 15th day of December, 1899, ordered, adjudged and decreed that the complainant is entitled to relief in the premises, and that the bill of complaint be and it is hereby taken *pro confesso* against said defendants. But because it doth not certainly appear to what relief the plaintiff is entitled it is further ordered and adjudged that one of the examiners of this court take testimony to support the allegations of the bill.

HENRY STOCKBRIDGE.

15th December, 1899, general replication to answer of defendants as filed.

19th December, 1899, petition of plaintiff for leave to take testimony and order of court thereon granting the same filed.

Petition of J. Louis Smith to Correct Misnomer and Order of Court Thereon.

(Filed 30th March, 1900.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON C. BUCHANAN ET AL.

To the honorable the judge of said court:

The petition of J. Louis Smith respectfully shows to your honor:

That in the bill and answer in this case, Louis Smith is named as one of the defendants having an interest in the fund in court in course of distribution.

That this is a misnomer and should be J. Louis Smith, the
47 petitioner being the person entitled to the interest in the fund and the person intended to be made defendant as aforesaid.

Your petitioner prays therefore that the bill and answer may be amended, striking out Louis Smith as one of the defendants and substituting your petitioner J. Louis Smith as such defendant.

And your petitioner will ever pray &c.

FRANK P. CLARK,
Solicitor for J. Louis Smith.

Assent of Complainants' Solicitors Annexed to Aforegoing Petition.

We assent to the amendment as prayed in the foregoing petition

Order of Court on Aforegoing Petition and Assent.

(Filed 30th March, 1900.)

In the Circuit Court No. 2 of Baltimore City.

It is hereby ordered this 30th day of March 1900, that the amendment of the bill and answer in this case as prayed for in the foregoing petition be allowed and the bill and answer stand so amended.

GEORGE M. SHARP.

Petition of J. Louis Smith, Adm'r d. b. n., c. t. a., of Samuel Smith, Deceased, to be Substituted a Defendant in Place of Robert Cart- Smith, Adm'r, &c.; Exhibit Therewith and Order of Court Thereon.

(Filed 7th April, 1900.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON C. BUCHAN- ET AL.

To the honorable the judge of said court:

Your petitioner, J. Louis Smith, one of the defendants in this cause, respectfully shows to the court that on the 13th day of February 1900, Robert Carter Smith, adm. of Samuel Smith, one of the defendants in this cause, died, and that on the 9th day of March 1900, your petitioner was duly appointed by the orphans' court of Baltimore city, adm. *d. b. n. c. t. a.* of the said Samuel Smith, as fully appears from the copy of his letters of administration filed herewith.

Wherefore your petitioner prays that he, as administrator *d. b. n. c. t. a.* of Samuel Smith, be substituted for the said Robert
48 Carter Smith, administrator *d. b. n. c. t. a.* of Samuel Smith, as one of the defendants herein.

And your petitioner will ever pray etc.

J. LOUIS SMITH,
Adm. d. b. n., c. t. a., of Samuel Smith,
By FRANK P. CLARK,
His Solicitor.

Exhibit Filed with Aforegoing Petition.

(Filed 7th April, 1900.)

THE STATE OF MARYLAND, *Baltimore City,* } *sc:*

The subscriber, register of wills for Baltimore city doth hereby certify that it appears by the records in his office that letters of administration, *de bonis non* with the will annexed of all the goods, chattels credits and personal estate of Samuel Smith deceased, was on the 9th day of March in the year of our Lord one thousand nine hundred granted and committed unto J. Louis Smith who was then and there appointed administrator *de bonis non* with the will annexed of the said deceased.

In testimony whereof, I hereunto subscribe my name and
[L. S.] affix the seal of my office this 5th day of April in the year of our Lord nineteen hundred.

STEPHEN R. MASON,
Register of Wills for Baltimore City.

Order of Court Passed on Aforegoing Petition and Exhibit.

(Filed 7th April, 1900.)

Ordered on the aforegoing petition and exhibit by the circuit court No. 2 of Baltimore city on this 7th day of April, 1900, that J. Louis Smith, administrator *d. b. n. c. t. a.* of Samuel Smith, be and he is hereby made a defendant in this cause in lieu of Robert Carter Smith administrator *d. b. n. c. t. a.* of Samuel Smith, deceased.

PERE L. WICKES.

Petition of Laura Patterson and Others for Leave to File an Amended Answer and Assent, and Order of Court Thereon.

(Filed 19th April, 1900.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN, Adm'x, *et al.*
vs.
WILSON C. BUCHANAN ET AL.

To the honorable the judge of said court:

The petition of Laura Patterson, Sidney T. Dyer and Elisha Dyer, Jr., her husband, parties defendant in the above-entitled cause, respectfully shows:

49 That since the filing of the petitioners of their joint and several answer to the bill of complaint in this cause, the petitioners have learned that at the time of the spoliations by the French, in the said bill mentioned, the firm of S. Smith and Buchanan consisted solely of Samuel Smith and James A. Buchanan; and that William B. Buchanan was not at that time a member of said firm, and was not admitted into the firm until long afterward.

Wherefore your petitioners respectfully pray the court that leave may be granted unto them to file their amended answer, herewith exhibited, in accordance with the said newly discovered and material facts.

And as in duty &c.

A. W. MACHEN,
ARTHUR W. MACHEN, JR.,
Solicitors for Petitioners.

Passage of above order assented to April 19, 1900.

TAYLOR & KEECH,
For Complainants.

Order of Court.

Ordered this 19th day of April, 1900, upon the above petition of Laura Patterson, Sidney Turner Dyer, and Elisha Dyer, Jr., her husband, defendants, that leave be granted as prayed to the said defendants to file their amended answer in this cause.

GEORGE W. SHARP.

Amended Answer of Laura Patterson and Others.

(Filed 19th April, 1900.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON C. BUCHANAN ET AL.

Amended answer.

The joint and several answer of Laura Patterson, Sidney T. Dyer, and Elisha Dyer, Jr., her husband, to the bill of complaint of Esther S. Buchanan; Esther S. Buchanan, administratrix of William B. Buchanan, deceased, and Esther S. Buchanan, administratrix *d. b. n. c. t. a.* of James A. Buchanan, deceased, against them and other defendants in this court exhibited.

These defendants, answering, say:—

1. That they believe the matter and things alleged in the first paragraph of said bill of complaint to be true.

2. That by the act of Congress of January 20th, 1885, the Congress of the United States, referred to the Court of Claims of the
50 United States, the ascertainment of claims of American citizens for spoiliations committed by the French prior to July 31st, 1801, with a proviso that such findings of the Court of Claims should not be binding either upon the United States or the claimant; and that in pursuance of the said act of Congress and with the consent and approbation of these respondents, the complainant did present before the said Court of Claims certain claims for losses of the class described in said act of Congress, sustained by the firm of S. Smith and Buchanan from spoiliations by the French; and that the Court of Claims did thereupon make a report to Congress sustaining the validity of the said claims urged by the complainant before the Court of Claims, and that Congress by act of March 3rd 1899, did make an appropriation to pay the said awards and findings of the Court of Claims, in the terms following:—

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby authorized and directed to pay out of any money in the Treasury not otherwise appropriated, to claimants in this act named, the several sums appropriated herein, the same being in full for, and the receipt of the same to be taken and accepted in each case as a full and final discharge of their respective claims, namely:

French Spoiliation Claims.

To pay the finding of the Court of Claims for indemnity for spoiliation by the French prior to July 30th, 1801, under the act entitled 'An act to provide for the ascertainment of claims of American

citizens for spoliations committed by the French, prior to the 31st day of July 1801:' *Provided*, That in all cases where the original sufferers were adjudicated bankrupts, the awards shall be made on behalf of the next of kin instead of to assignees in bankruptcy, and the awards in cases of individual claimants shall not be made until the Court of Claims shall certify to the Secretary of the Treasury that the personal representatives on whose behalf the award is made represent the next of kin, and the courts which granted the administrations, respectively shall have certified that the legal representatives have given adequate security for the legal disbursement of the awards namely

.....

.....

on the ship Jane, John Wallace master, namely, Esther S. Buchanan, administratrix, representing Smith and Buchanan, eleven thousand, six hundred and sixty dollars and twenty-one cents.

.....

.....

On the ship Patapsco, William Hill, master, namely,

.....

Esther S. Buchanan, administratrix of the estate of William B. Buchanan who was the surviving partner of the firm of Smith and Buchanan, deceased, twenty-five thousand and fifty-six dollars the value of the cargo shipped by the said firm."

51 3. That the firm of Smith and Buchanan, by whom the said losses were originally sustained, consisted, at the time of the said losses, of two members, and no more, to wit, Samuel Smith and James A. Buchanan, each of whom owned a one-half interest in the said firm; that William B. Buchanan son of said James A. Buchanan was not at that time a member of said firm, being in fact an infant of tender years to wit, about three years of age; and that he was not admitted in the firm until long afterward, to wit: after the year 1816.

4. That in or after the year 1816, the said William B. Buchanan was admitted into the firm of S. Smith and Buchanan, and did outlive his two copartners, Samuel Smith and James A. Buchanan, and was the last surviving partner of the firm.

5. These respondents do not admit that after the said William B. Buchanan was admitted into the firm of S. Smith and Buchanan, the three members thereof, namely, Samuel Smith, James A. Buchanan, and William B. Buchanan were equal copartners; but these respondents upon credible information aver that the said Samuel Smith owned a full half interest in the said firm and that the said James A. Buchanan and William B. Buchanan together owned the other one-half interest therein.

6. These respondents believe that the matters and things stated in the fourth and sixth paragraphs of said bill are true.

7. These respondents admit that the fund in the said bill mentioned is distributable by the complainant to the next of kin, being citizens of the United States, of Samuel Smith and James A. Buchanan, the original sufferers, who were living at the date of the appropriation

or passage of the act of Congress aforesaid, and should be paid or distributed to and among them in their several shares and proportions by the said plaintiff, but the respondents do not admit that the next of kin of William B. Buchanan are, as such, entitled to any part or share in the said fund.

8. These respondents admit that the said Samuel Smith, who died in or about the year 1839 had five children as stated in the ninth paragraph of the said bill, one of whom was a daughter named Sidney, who intermarried with Edward Patterson and that of the six children of the said marriage who are named in the bill, four, namely, Robert Patterson, Margaret Turner, Edward Patterson, Jr. and Samuel Smith Patterson, died before the passage of the said act of Congress approved March 3rd, 1899, and without leaving any issue; that the said Sidney, daughter of the said Mrs. Sidney Patterson, and granddaughter of the said Samuel Smith, died in the lifetime of her mother, leaving, as her only issue, one child, Sidney Smith Turner, who has intermarried with Elisha Dyer, Jr. and is one of these respondents, and that the said Mrs. Sidney Patterson, daughter of the said Samuel Smith, died in the year 1879, and the respondent, Laura Patterson is her only now living child; and the said Laura Patterson and Sidney Turner Dyer are the only descendants of the said Mrs. Sidney Patterson now living or living at the time of the passage of the said act of Congress of March 3rd, 1899.

52 9. And these respondents pray that the said fund may be distributed according to law in this cause and that in such distribution due regard may be had to the legal rights of them the said Laura Patterson and Sidney Turner Dyer, respectively.

And these respondents pray to be allowed their reasonable costs.

A. W. MACHEN,
ARTHUR W. MACHEN, JR.,
Solicitors for Respondents.

Petition of J. Louis Smith, Adm'r d. b. n. c. t. a. of Samuel Smith, Deceased, et al. to File Amended Answer and Order of Court Thereon.

(Filed 27th April, 1900.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN, Adm'x, *et al.*
vs.
WILSON C. BUCHANAN ET AL.

To the honorable the judge of said court:

The petition of J. Louis Smith, adm., *d. b. n. c. t. a.* of Samuel Smith, deceased, and J. Louis Smith, in his own right, Sallie Carter, Mary Coles Carter, Robert Smith Carter, Cary Anne Fink, and Rudolph Fink, her husband, Kate Prather Nicholas, parties defendant in the above-entitled cause, respectfully shows:

That since the filing *of* the petitioners of their joint and several answer to the bill of complaint in this cause, Robert Carter Smith,

one of the defendants having since died and J. Louis Smith having been appointed administrator *d. b. n. c. t. a.* of Samuel Smith, successor administrator to the said Robert Carter Smith deceased, as aforesaid, and having as such administrator *d. b. n. c. t. a.*, been made one of the defendants in this cause in the place of the said Robert Carter Smith and the petitioners having learned that at the time of the spoiliations by the French, in the said bill mentioned, the firm of S. Smith and Buchanan consisted solely of Samuel Smith and James A. Buchanan; and that William B. Buchanan was not at that time a member of said firm, and was not admitted into the firm until long afterward.

Wherefore your petitioners respectfully pray the court that leave may be granted unto them to file their amended answer herewith exhibited, in accordance with the said newly discovered and material facts.

And as in duty, &c.

FRANK P. CLARK,
Solicitor for the Petitioners.

Order of Court.

Ordered this 27th day of April, 1900, upon the above petition of J. Louis Smith, adm. *d. b. n. c. t. a.* of Samuel Smith, deceased,
53 and J. Louis Smith, in his own right, Sallie Carter, Mary Coles Carter, Robert Smith Carter, Cary Anne Fink and Rudolph Fink—her husband, Kate Prather Nicholas and Sarah Nicholas, defendants, that leave be granted them as prayed to file their amended answer in this cause.

HENRY STOCKBRIDGE.

Amended Answer of J. Louis Smith, Adm'r d. b. n. c. t. a. of Samuel Smith, Deceased, et al.

(Filed 27th April, 1900.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON C. BUCHANAN ET AL.

Amended answer.

The joint and several answer of J. Louis Smith, administrator *d. b. n. c. t. a.* of Samuel Smith, deceased; J. Louis Smith, in his own right; Sallie Carter, Mary Coles Carter, Robert Smith Carter, Cary Anne Fink, and Rudolph Fink, her husband; Kate Prather Nicholas and Sarah Nicholas, parties defendant in the above-entitled cause, to the bill of complaint of Esther S. Buchanan; Esther S. Buchanan, administratrix of William B. Buchanan, deceased, and Esther S. Buchanan, administratrix *d. b. n. c. t. a.* of James A. Buchanan, deceased, against them and other defendants in this court exhibited.

The defendants answering, say:

1. That they believe the facts set out in the first paragraph of the said bill to be true.

2. That they believe the facts set out in the second paragraph of said bill to be true, with this qualification, however, to wit: That the said William B. Buchanan did not become a member of the firm until January 1st, eighteen hundred and eighteen, and that prior to that time, to wit, the year 1818 he had no interest whatever in said firm, or in the assets thereof.

3. That by an act of Congress of January 20th, 1885, the Congress of the United States referred to the Court of Claims of the United States the ascertainment of claims of American citizens for spoliations committed by the French prior to July 31st 1801, with a proviso that such findings of the Court of Claims should not be binding either upon the United States or the claimant; and that in pursuance of the said act of Congress and with the consent and approbation of these respondents, the complainant did present before the said Court of Claims certain claims for losses of the class described in said act of Congress sustained by the firm of S. Smith and Buchanan from spoliations by the French; and that the Court of Claims did thereupon make a report to Congress sustaining the validity of the said claims urged by the complainant before the
54 Court of Claims, and that Congress by act of March 3d, 1899, did make an appropriation to pay the said awards and findings of the Court of Claims in the terms following:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay out of any money in the Treasury not otherwise appropriated, to claimants in this act named the several sums appropriated herein, the same being in full for, and the receipt of the same to be taken and accepted in each case as a full and final discharge of their respective claims, namely:

French Spoliation Claims.

To pay the findings of the Court of Claims for indemnity for spoliations by the French prior to July 30th, 1801, under the act entitled 'An act to provide for the ascertainment of claims of American citizens for spoliations committed by the French prior to the 31st day of July, 1801" *Provided*, That in all cases where the original sufferers were adjudicated bankrupts, the awards shall be made on behalf of the next of kin instead of to assignees in bankruptcy, and the awards in cases of individual claimants shall not be made until the Court of Claims shall certify to the Secretary of the Treasury that the personal representatives on whose behalf the award is made, represent the next of kin, and the courts which granted the administrations respectively, shall have certified that the legal representatives have given adequate security for the legal disbursement of the awards, namely:

On the ship Jane, John Wallace, master, namely: Esther S. Buchanan, administratrix, representing Smith & Buchanan, eleven thousand, six hundred and sixty dollars and twenty-one cents.

On the ship Patapsco, William Hill, master, namely:—Esther S.

Buchanan, administratrix of the estate of William B. Buchanan, who was the surviving partner of the firm of S. Smith & Buchanan, deceased, twenty-five thousand and fifty-six dollars ($25,056), the value of the cargo shipped by said firm—

Provided, however, that any French spoliation claim appropriated for in this act, shall not be paid if held by assignment or owned by any insurance company."

4. That they believe the facts set out in the 4th paragraph of the said bill to be true.

5. That they deny that the acts of Congress and decisions of the courts touching the subject of the distribution of the fund in the complainant's hands referred to in the 8th paragraph of the said bill are susceptible of the construction placed upon them by the complainant, to wit:—that it is her right and duty to distribute to the next of kin of Samuel Smith, deceased, such portion of the said fund as may be by the court awarded to them; on the contrary your respondents respectfully insist that it is her duty to pay over the same to J. Louis Smith, the administrator *d. b. n. c. t. a.* of Samuel Smith, who holds his appointment under and by virtue of an order of
55 the orphans' court of Baltimore city, as will appear from his letters of administration, a copy of which has heretofore been filed in this cause, to be by him distributed under the orders of this court to such persons as may be entitled thereto, and they further aver that the firm of S. Smith & Buchanan, by whom the said losses were originally sustained, consisted at the time of the said losses, of two members and no more, to wit: Samuel Smith and James A. Buchanan, each of whom owned a one-half interest in said firm. That William B. Buchanan, son of James A. Buchanan, was not at that time a member of the firm, being in fact an infant of tender years, to wit, about three years of age; and that he was not admitted into the firm until January 1st, 1818.

6. They believe the facts set forth in the 6th clause of said bill to be true.

And your respondents further aver that on the 13th day of February, 1900, the said Robert Carter Smith, died, and J. Louis Smith, one of these respondents was duly appointed by the orphans' court of Baltimore city as his successor administrator *d. b. n. c. t. a.* of Samuel Smith, and the said J. Louis Smith was by an order of this court heretofore made on the 7th day of March, 1900, substituted for said Robert Carter Smith, adm. *d. b. n. c. t. a.* as one of the defendants in this cause.

7. That they neither admit nor deny the facts set out in the 7th clause of the said bill, having no knowledge upon the subject.

8. That they neither admit nor deny the facts set out in the 8th clause of the said bill, having no knowledge upon the subject.

9. That they believe the facts set out in the 9th clause of the said bill to be true, with this further allegation that since the filing of their original answer by these respondents Robert Carter Smith, has died, as has been hereinbefore fully set forth, and J. Louis Smith his successor administrator, has been substituted for him as one of the defendants in this cause.

10. That they admit that both James A. Buchanan and Samuel Smith, deceased, left wills, but they deny that the fund in the hands of the complainant is distributable to the "nearest of kin of the respective suffer-s living at the date of the appropriation" by the complainant, but they conte-d that so much of the said fund as may be coming to those who claim under Samuel Smith, deceased, must be paid over to J. Louis Smith, administrator *d. b. n. c. t. a.*, of Samuel Smith, deceased, to be distributed by him under the order and direction of this court, nor are your respondents prepared to admit that the expression "nearest of kin" is equivalent to the language used in the act of appropriation, to wit:—the act approved March 3rd, 1899, which language is as follows, "The awards shall be made on behalf of the next of kin" your respondents not being prepared to admit that the expression "nearest of kin" is equivalent to that of "next of kin."

11. They neither admit nor deny the facts set out in the 11th clause of the said bill.

56 12. That in answer to the 12th paragraph of said bill, your respondents do not admit after the said William B. Buchanan, was admitted into the firm of S. Smith & Buchanan, the three members thereof namely: Samuel Smith, James A. Buchanan and William B. Buchanan were equal copartners, but these respondents upon credible information aver that the said S. Smith continued to own a full one-half interest in the said firm and that the said James A. Buchanan and William B. Buchanan together owned the other one-half interest; and your respondents aver further that, under the proper construction of the act of Congress of March 3, 1899, the fund in court cannot be treated as assets of the firm of S. Smith & Buchanan as it existed after William B. Buchanan became a member, to wit: on January 1st 1818 and distributable among the then partners thereof, but that it must be distributed among the next of kin of Samuel Smith and James A. Buchanan, who alone constituted the firm when the claims arose, to wit: in the year 1798, and each of whom owned one-half interest therein, and that the next of kin of William B. Buchanan are not entitled to any portion thereof.

13. That they neither admit nor deny the facts set out in the 13th clause of the said bill.

Wherefore these respondents pray that a decree may be entered in this cause and the fund distributed according to law, and that they be allowed their reasonable costs and charges in this behalf sustained.

And as in duty bound &c.

FRANK C. CLARK,
Solicitor for Respondents.

Order for Appearance of Wilson C. Buchanan.

(Filed 18th May, 1900.)

In the Circuit Court No. 2 of Baltimore City, May Term, 1900.

ESTHER S. BUCHANAN
vs.
WILLIAM B. BUCHANAN ET AL.

Mr. Clerk:

Please enter my appearance for Wilson C. Buchanan, one of the defendants.

H. B. STIMPSON, *Solicitor.*

Order for Appearance of Laura B. Wainright.

(Filed 9th May, 1900.)

In the Circuit Court No. 2 of Baltimore City, March Term, 1900.

ESTHER S. BUCHANAN, &c.,
vs.
WILSON C. BUCHANAN ET AL.

Mr. Clerk:

Please enter my appearance for defendant, Laura B. Wainwright.

FISHER, BRUCE & FISHER, *Solicitors.*

57 *Depositions.*

(Filed 11th June, 1900.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON C. BUCHANAN ET AL.

The above cause being at issue, and notice having been given me by the solicitor for the plaintiffs of a desire to take testimony in the same, I, A. de Russey Sappington one of the standing examiners of the circuit courts of Baltimore city, under and by virtue of an order of the above-named circuit court passed in said cause on the 19th day of December, 1899, met on the 19th day of December, in the year eighteen hundred and ninety-nine, at my office in the city of Baltimore, in the State of Maryland and assigned the 20th day of December in the same year at 3 o'clock in the afternoon, and the office of E. Parkin Keech, Esq., in the city and State aforesaid, as the time and place for such examination of witnesses in said cause; at which last-mentioned said time and place I attended, due notice of such meeting having been given, and proceeded in the presence of the solicitors of the respective parties to take the following depositions, that is to say:—

ESTHER S. BUCHANAN, the plaintiff in this case, produced on her own behalf, having been first duly sworn, deposeth and saith as follows, that is to say:

By the EXAMINER:

1 Q. State your name, residence and occupation?
A. Esther S. Buchanan, 1424 Park avenue, no occupation.
2 Q. Do you know the parties to this suit?
A. I know some of the parties.

By Mr. KEECH:

1 Q. You are, I believe, the daughter and administratrix of William B. Buchanan.
A. I am, and I herewith file a certified copy of the letters of administration marked "Plaintiffs' Exhibit A" heretofore filed with the bill in this case.
2 Q. When did William B. Buchanan die?
A. April 20th, 1857.
3 Q. Was William B. Buchanan during his lifetime a member of the firm of S. Smith Buchanan and if so, who were the other members of said partnership?
A. My father was a member of said firm and his other partners were my grandfather James A. Buchanan and Samuel Smith.
4 Q. Who was the last surviving partner of said firm?
A. My father outlived both my grandfather and Samuel Smith, and was the last surviving member of said firm of S. Smith and Buchanan.
58 5 Q. Did you ever urge before the Court of Claims of the United States any claims on behalf of said firm, and what was it?
A. I urged before the Court of Claims as administratrix of William B. Buchanan, as last surviving member of said firm of Smith and Buchanan, and on behalf of said firm certain claims of the class described in the act of January 20th, 1885, a certified copy of which I herewith file as "Plaintiffs' Exhibit Examiner D." Upon the finding of said Court of Claims, Congress by act of March 3rd, 1899, made an appropriation for the payment to me on behalf of the firm of S. Smith and Buchanan, of two claims amounting in the aggregate to $3,716.21; I herewith file a copy of said act as "Plaintiffs' Exhibit Examiner E."
6 Q. Have you ever filed any account of the same in the orphans' court of Baltimore city?
A. I have, and herewith file a copy of my administration account, marked "Plaintiffs' Exhibit B," which has been heretofore filed with the bill, which shows that I have for distribution among those entitled to the same, the sum of $22,629.47. After the payment of all costs and charges incidental to the collection of said fund and the costs in the orphans' court.
7 Q. For whose benefit do you hold this sum of money?
A. I am advised that under the acts of Congress to which reference has been made, I hold this fund for distribution among the

next of kin of all three of the partners of the firm of S. Smith and Buchanan to wit: Samuel Smith, James A. Buchanan and William B. Buchanan, irrespective of whether or not said partners or any of them left wills and irrespective of whether or not any letters of administration or testamentary have been issued on the estates of either of the other partners.

8 Q. Do you know whether or not any of said partners left wills?

A. My father did not. My grandfather James A. Buchan- did, and Samuel Smith did.

9 Q. Have letters of administration or testamentary been granted on the estates of James A. Buchanan and Samuel Smith?

A. Yes, I have been appointed administratrix, *d. b. n. c. t. a.* of my grandfather, James A. Buchanan as evidenced by a copy of letters of administration, which I file with the examiner as "Plaintiffs' Exhibit C," and Col. Robert Carter Smith has been appointed administrator, *d. b. n. c. t. a.* of Samuel Smith as evidenced by a copy of said letters herewith filed as "Plaintiffs' Exhibit Examiner F."

10 Q. Did William B. Buchanan leave any widow surviving him, and if so, was she living or dead March 3rd, 1899?

A. William B. Buchanan left a widow surviving him, but she died previous to March 3rd, 1899.

11 Q. What children, if any, were born to William B. Buchanan?

A. My father had nine children, five of whom died before
59 himself. These all died unmarried and leaving no issue. He left surviving him, myself, who am unmarried. My brother Wilson C. Buchanan now living in Columbus, Ohio. P. Carr Buchanan and Maria J. Buchanan, both of which latter children died previous to March 3rd, 1899, unmarried and leaving no issue.

12 Q. How many children did James A. Buchanan have born to him?

A. He had a large number. I have heard that there — eighteen, of these only two ever married.

13 Q. How many children of said James A. Buchanan were living at the time of his death?

A. Four, my father William B. Buchanan, Robert S. Buchanan, Esther S. Buchanan, and Samuel S. Buchanan, of these Esther S. Buchanan and Samuel Smith Buchanan died unmarried, and leaving no issue.

14 Q. Did any of the children of James A. Buchanan who predeceased their father, marry or leave issue?

A. To the best of my knowledge they did not. Most of them died in infancy. The only ones among these children who predeceased their father who came to mature age were Eliza S., John and James. I know that all three of these died unmarried and without issue.

15 Q. Did James A. Buchanan leave any widow surviving him?

A. He did not.

16 Q. Which children of James A. Buchanan married?

A. William B. and Robert S.

17 Q. Are they living or dead?

A. Dead. William B. Buchanan died April 20th, 1857 and Robert S. Buchanan July 7th, 1877.

18 Q. Did either of them leave a widow surviving him?

A. Yes, both of them left widows surviving them, but the widows of both died previous to March 3rd, 1899.

19 Q. You have I believe already in reply to my 11th question herein stated what children were born to William B. Buchanan.

A. I have.

20 Q. What children, if any, did Robert S. Buchanan have born to him?

A. He had several children born to him, some of whom died before himself. Those of his children who are now living or being now dead have left descendants surviving them, are as follows:

His only living child is Miss Ellen Buchanan who is now living unmarried at Bay Shore, Long island, in the State of New York.

60 Three children now dead, as follows:

James A. Buchanan, the younger, who died leaving surviving him Richard P. Buchanan, who is now living in Cincinnati, Ohio.

Esther Buchanan, who is now the wife of James W. Tyson, both of whom are now living at South Stafford, in the State of Vermont.

Laura Buchanan, now the wife of James Mayhew Wainright both of whom are now living at Rye-on-the-Sound, Long island, in the State of New York and lastly; Rosa Buchanan, who married Eugene Lentilhon. This last-named daughter died May 3rd, 1898. She left surviving her one son, Eugene Lentilhon, Jr., now living at Bay Shore, Long island, in the State of New York.

2. Eliza Buchanan, who married Walter C. Smith, and died in February, 1860, she left surviving her two children, one of whom has since died in infancy; the survivor is Clement C. Smith who is now living at Wheeling, in the State of West Virginia.

3. William B. Buchanan, who married and who died in 1891 I think. He left surviving him two children, Marie Buchanan, a daughter, and Charles Buchanan, a son, both of whom reside in Baltimore, Maryland.

21 Q. Are the persons whom you have named all of the descendants of James A. Buchanan and William B. Buchanan?

A. They are to the best of my knowledge and belief. If there are others I never heard of them and I do not believe that any such exist.

22 Q. Which of them are adults, and which infants?

A. All of them are adults except Charles Buchanan who is about 18 years of age and Eugene Lentilhon, Jr., who is two years old.

23 Q. Do you know whether or not your brother Wilson C. Buchanan ever made any assignment or attempted assignment of his interest in this fund?

A. In the lifetime of Mrs. Hetty Cary Martin the wife of the late H. Newell Martin, both of who are now dead, I was told informally and not by Mrs. Martin or any representative of hers that my brother had made an assignment to Mrs. Martin of all his interest in his

father's and grandfather's French spoiliation claim. I did not then see nor have I ever since seen the purported assignment. I do not know what its terms were in any way, nor what the consideration for it was. After the death of Mrs. Martin which occurred September 27th 1892, I received a letter from Mr. Martin stating that this claim had been transferred to him under an order of the orphans' court of Baltimore city. I herewith file a certified copy of the order to which I presume he referred as "Plaintiffs' Exhibit Examiner G."

24 Q. Is H. Newell Martin living or dead, and if so, when did he die?

A. He died in England, October 27th, 1896.

61 25 Q. Do you know whether any letters of administration have ever been taken out on the estates of either Mrs. Martin or Mr. Martin?

A. I do not know definitely, but to the best of my knowledge none have been taken out in this State.

26 Q. Did Mrs. Hetty Cary Martin or H. Newell Martin leave any children surviving them, or either of them?

A. No.

27 Q. Has any claim been made on you by any person asserting a right under the assignment about which I have been questioning you to have paid to him the share of the said Wilson C. Buchanan in the fund in your hands for distribution?

A. No sir.

28 Q. You have testified that a partnership existed between your father, William B. Buchanan, your grandfather, Mr. James A. Buchanan and the late Samuel Smith. How do you know that such partnership existed?

A. I only know from what I have been told.

29 Q. Told you by whom?

A. By the members of my family. All of this happened before I was born, so of course it is all hearsay.

30 Q. Do you know of the existence of any books of account or records of this copartnership?

A. I do not.

31 Q. Under what circumstances, if you know, was the firm dissolved?

A. I don't know under what circumstances.

32 Q. Do you know what the respective shares of the three partners in the firm's assets or profits was?

A. I have been lead to believe that they were equal partners.

(Objected to.)

33 Q. Have you any knowledge whatsoever to the contrary of this in any way, that is knowledge which would indicate that their shares were other than equal?

A. None whatever.

Cross-examination.

(By Capt. CLARK:)

1 X Q. You say in your reply to the 32nd question that you have always been lead to think that the various members of the firm of S. Smith — Buchanan were equal partners. Will you please state what facts are known to you to justify your being so led to believe?

A. No facts whatever, simply what I have heard, have been told.

2 X Q. Heard from or told by whom?

A. Older members of the family who lived at that time.

3 X Q. Please name them.

A. Mr. Smith Buchanan, my uncle, also Mr. James Buchanan, son of Mr. Robert Buchanan.

62 4 X Q. Please state specifically what Mr. James A. Buchanan said to you and when and where?

A. In Baltimore, at the time that the French claims were first spoken of and they were first put into your hands in connection with the distribution of it with regard to my brother and myself receiving two-thirds interest of it. I can't remember his words. The statement that he made was to that effect. He is now dead and died in 1895 I think.

This answer is objected to for the reason that it is hearsay testimony.

5 X Q. I propound you the same question with regard to Smith Buchanan?

A. I have no recollection of anything definite that he said. It was only in a general way that he spoke of it.

Answer objected to on the ground that it is indefinite and hearsay.

6 X Q. Do you know of your own knowledge anything at all upon this subject.

A. I do not.

7 X Q. Please give the exact days of the birth and death of your father William B. Buchanan?

A. My father was born September 9th, 1795, he died April 30th, 1857.

Redirect examination by Mr. KEECH:

1 R. D. Q. In answer to the 4th cross-question you said that Mr. James A. Buchanan, Jr. had spoken to you of the two-thirds interest of yourself and your brother in any French spoliation recovery. Do you not mean the interest of yourself and brother in the two-thirds?

(Objected to as leading.)

A. (No answer.)

2 R. D. Q. What do you mean by this expression?

(Objected to because he withdrew the question that suggests the answer.)

A. I mean exactly what I said, that is what he said at the time, that we were entitled to more than his family.

(Objected to as hearsay.)

3 R. D. Q. How?

A. Because of my father's interest as well as my grandfather's.

(Objected to as hearsay.)

General question. Do you know or can you state any other matter or thing that may be to the benefit or advantage of the parties to this suit or either of them or that may be material to the subject of this your examination or the matters in question between the parties? If so, state the same fully and at large in your answer?

A. Nothing.

ESTHER S. BUCHANAN.

63 Miss MARY COLES CARTER, a witness of lawful age produced on behalf of the plaintiff-, having been first duly sworn, deposes and saith as follows, that is to say:

By the EXAMINER:

1 Q. State your name, residence and occupation?

A. Mary Coles Carter, Catonsville. No occupation.

2 Q. Do you know the parties to this suit?

A. I know most of the parties. I am one of the defendants.

By Mr. KEECH:

1 Q. Is Samuel Smith, who was a member of the firm of S. Smith and Buchanan, and who was I believe your great grandfather, living or dead?

A. He died many years since.

2 Q. Did he marry and leave children, and if so, will you give those children's names?

A. He left five children as follows: John Spear Smith Louis Smith Laura Smith Sidney Smith, a daughter, Mary Buchanan Smith.

3 Q. Is the wife of Samuel Smith living or dead?

A. Dead many years since.

—. Did John Spear Smith marry. If so, whom did he marry, and are he and his wife living or dead?

A. John Spear Smith married Cary Ann Nicholas, both of whom are now dead.

5 Q. Did John Spear Smith have any children, if so, please give their names?

A. He had seven children:

1. Margaret, who married Robert H. Carter, both of whom are now dead, to whom were born several children, all of whom died before maturity except the following:

Myself, Mary Coles Carter, Sallie Randolph Carter who is named in the bill simply Sallie Carter, both of whom live in Catonsville, Md. My sister Margaret who died unmarried and leaving no issue

February 3rd, 1899, and my brother Robert Smith Carter who is now living in Hopkinsville, in the State of Kentucky.

2. Samuel Smith.

3. Wilson Cary Smith.

4. Thomas Jefferson Smith, the last three died unmarried and leaving no issue.

5. Mary, who married Samuel Nicholas, both of whom are now deceased. They left three children Cary Ann who married Rudolph Fink, both of whom are now living at Crescent Hill, Jefferson county, Kentucky, Kate Prather Nicholas and Sarah Nicholas, both of whom are living at Catonsville.

6. Louis Smith, who is now living at Topping, Virginia.

7. Robert Carter Smith, who is now living at Catonsville, Md.

64 6 Q. Is Louis Smith, the son of Samuel Smith living or dead, and if dead did he leave any issue?

A. He died many years since leaving no issue.

7 Q. Did Laura Smith, the daughter of Samuel Smith marry, is she living or dead, and if so, did she leave any children?

A. She married Christopher Hughes, both she and her husband are now dead. She had two children, Charles and Margaret, both of whom died before March 3rd, 1899, leaving no issue surviving them.

8 Q. Did Sidney Smith the daughter of Samuel Smith marry?

A. Yes, she married Edward Patterson. Both she and her husband are now dead.

9 Q. Did she leave any children?

A. Yes, six as follows:

1. Samuel.

2. Edward, and

3. Robert, sons and

4. Margaret, a daughter, all of whom died prior to March 3rd, 1899, leaving no issue.

5. Laura Patterson, who is now living in the city of Baltimore, unmarried.

6. Sidney Patterson, who married William Turner, both of whom are now dead, they left one child, a daughter, Sidney Turner, who is now the wife of Elisha Dyer, Jr., whose place of residence is Newport, Rhode Island.

10 Q. Did Mary Buchanan Smith, the daughter of Samuel Smith marry, and if so, whom?

A. Yes, she married John Mansfield who was an English subject, and who returned to England with his wife, where they both died.

11 Q. Do you know whether or not there were any children of this marriage?

A. I do know that there were eleven children who were as follows:

James, John Smith, Margaret, Samuel, Charlotte, Henrietta, William Rose, Emily, Horatio, Isabella and Charles Edwin.

12 Q. Do you know whether there were any other children?

A. I do not.

13 Q. Do you know whether these children are living or dead?
A. I do not. I have heard nothing from them for years.
14 Q. Do you know whether or not either Mr. or Mrs. Mansfield married more than once?
A. I am quite sure that neither married a second time.
15 Q. Are the persons whom you have named above as now living all of the descendants of Samuel Smith?
A. I believe them to be all the descendants of Samuel Smith. I have never heard of the existence of any others.

65 No cross-examination.

General question. Do you know or can you state any other matter or thing that may be to the benefit or advantage of the parties to this suit or either of them, or that may be material to the subject of this your examination, or to the matters in question between the parties. If so, state the same fully and at large in your answer?
A. No.

MARY COLES CARTER.

(The plaintiff also offers in evidence "Plaintiffs' Exhibit Examiner Nos. 1, 2, 3, 4, 5 and 6.)

ROBERT CARTER SMITH, one of the defendants in this case, produced on his own behalf, having been first duly sworn, deposeth and saith as follows, that is to say:

By the EXAMINER:

1 Q. State your name, residence and occupation.
A. Robert Carter Smith, Catonsville, Md. No occupation.
2 Q. Do you know the parties to this suit?
A. I know most of the parties.

By Mr. CLARK:

1 Q. Will you please look at the book which I now show you, and tell me what it is?

(Book introduced in evidence as Defendants' Exhibit Examiner No. 1.)
(Objected to.)

A. I recognize it. It is the private book of my grandfather, General Samuel Smith, who was the senior partner of the firm of S. Smith and Buchanan.
2 Q. Will you please state in whose custody this book has been since the death of your grandfather, General Samuel Smith?
A. It was in the custody of my father, John Spear Smith, until his death, and then taken possession of by my brother, Captain Louis Smith, who had it in his posession until about eight or nine years ago and has been in my possession ever since.

Cross-examination by Mr. KEECH:

1 X Q. Under what circumstances did your brother hand over the possession of this book to you?

A. This and other books were sent up to me from Middlesex county in Virginia, where my brother J. Louis lives to be used by my attorney in the prosecution of the French spoliation claims.

2 X Q. Whose letter book do you believe this to be?

A. The letter book of my grandfather, Samuel Smith. There is every indication of its being so.

3 X Q. As an individual?

A. Yes.

66 4 X Q. It is not in any sense the letter book of the firm of S. Smith and Buchanan?

A. My opinion is that it is not.

(Question and answer objected to as the book itself is the best evidence of what it really is.)

5 X Q. When to the best of your knowledge did the partnership or firm doing business under the name of S. Smith and Buchanan, cease to carry on active business operations?

A. It stopped when it failed.

6 X Q. What was the date of that failure?

A. I do not know the exact date except that it was in 1821.

7 X Q. It was previous then to the year 1824 to the best of your belief?

A. Yes, sir.

General question. Do you know or can you state any other matter or thing that may be to the benefit or advantage of the parties to this suit or either of them, or that may be material to the subject of this your examination or the matters in question between the parties. If so, state the same fully and at large in your answer.

A. No sir.

R. CARTER SMITH.

MARY COLES CARTER, a witness heretofore produced and sworn, recalled on behalf of J. Lewis Smith and others.

By Mr. CLARK:

1 Q. Miss Carter, Col. R. Carter Smith, who was the administrator of Samuel Smith, deceased, died, did he not, in February last?

A. Yes, the 13th of February, 1900.

2 Q. He was a single man, was he not?

A. Yes.

3 Q. Was he ever married?

A. Never.

4 Q. Was either his father or his mother living at the date of his death?

A. No.

5 Q. Had he any brothers or sisters living and if so, who?

A. He had brother, J. Lewis Smith, and no sisters living.

6 Q. Will you please give the names of the brothers and sisters, if any, he had who predeceased him and give the names of the children living at the date of his death, if any, of such predeceased brothers and sisters?

A. The three brothers who predeceased him were Samuel Smith; Thomas Jefferson Smith and Wilson Cary Smith all of whom died single. His predeceased sisters were, Margaret Smith, who married Robert Hill Carter and who had living at the date of the
67 death of the said Robert Carter Smith the following children, Mary Coles Carter, that is myself; Robert Smith Carter, Sallie Carter. Mrs. Carter had one other child, a daughter, who died before the said Robert Carter Smith, unmarried.

There remained but one other sister who predeceased him and left children whose name was Mary, who married Samuel Nicholas both of whom are now dead. She had three children and no more, and they all were living at the date of the death of the said Robert Carter Smith. There were Cary Ann Nicholas, who married Rudolph Finke, Kate Prather Nicholas and Sarah Nicholas, both of whom are unmarried.

Cross-examination waived.

(The defendants J. Louis Smith and others represented by Mess. Frank P. Clark and Arthur W. Machen offer in evidence the original papers and proceedings in the case known as In the matter of James A. Buchanan an insolvent debtor, late pending in the Baltimore county court, now pending in the court of common pleas of Baltimore city, and appearing on Insolvent Transfer Docket, folio 127, and the complainants hereby waived the production of the copy of the docket entries.

The defendants also offer in evidence Defendants' Exhibit- A. A. B. B. C C and D D.)

General question. Do you know or can you state any other matter or thing that may be to the benefit or advantage of the parties to this suit, or either of them, or that may be material to the subject of this your examination or the matters in question between the parties. If so, state the same fully and at large in your answer.

A. No.

MARY COLES CARTER.

No other witnesses being named or produced before me, I then, at the request of the solicitors of the respective parties closed the deposition- taken in said cause, and now return them closed, under my hand and seal on this — day of —— in the year of our Lord nineteen hundred, at the city of Baltimore, in the State of Maryland.

A. DE R. SAPPINGTON, *Examiner.* [SEAL.]

There are seventeen exhibits with these depositions, to wit: Plaintiffs' Exhibit- A. B & C. filed with the bill E. F & G filed with the examiner and also Nos. 1, 2, 3, 4, 5 and 6.

Defendant-' Exhibit- Examiner A A, B B, C C, & D D, and also two agreements of counsel filed as such.

A. DE R. SAPPINGTON, *Examiner.*

PLAINTIFFS' EXHIBIT D.

(Filed with depositions.)

(Public—No. 13.)

An act to provide for the ascertainment of claims of American
68 citizens for spoliations committed by the French prior to the thirty-first day of July, eighteen hundred and one.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That such citizens of the United States, or their legal representatives, as had valid claims of indemnity upon the French government arrising out of illegal capture, detention, seizure, condemnations and confiscations prior to the ratification of the convention between the United States and the French Republic concluded on the thirtieth day of September, eighteen hundred, the ratifications of which were exchanged on the thirty-first day of July following may apply by petition to the Court of Claims, within two years from the passage of this act, as hereinafter provided; provided, that the provisions of this act shall not extend to such claims as were embraced in the convention between the United States and the French Republic concluded on the thirtieth day of April eighteen hundred and three, nor to such claims growing out of the acts of France as were allowed and paid, in whole or in part, under the provisions of the treaty between the United States and Spain concluded on the twenty-second day of February eighteen hundred and nineteen; nor to such claims as were allowed, in whole or in part, under the provisions of the treaty between the United States and France concluded on the fourth day of July eighteen hundred and thirty-one.

SEC. 2. That the court is hereby authorized to make all needful rules and regulations not contravening *to* the laws of the land or the provisions of this act, for executing the provisions hereof.

SEC. 3. That the court shall examine and determine the validity and amount of all claims included within the description above mentioned, together with their present ownership, and, if by assignee, the date of the assignment, with the consideration paid therefor; provided, that in the course of their proceedings they shall receive all suitable testimony on oath or affirmation, and all other proper evidence, historic and documentary, concerning the same; and they shall decide upon the validity of said claims according to the rules of law, municipal and international, and the treaties of the United States applicable to the same, and shall report all such conclusions of fact and law as in their judgment may effect the liability of the United States therefor.

SEC. 4. That the court shall cause notice of all petitions presented under this act to be served on the Attorney General of the United States, who shall be authorized, by himself or his assistant, to examine witnesses, to cause testimony to be taken, to have access to all testimony taken under this act, and to be heard by court. He

shall resist all claims presented under this act by all proper legal defenses.

SEC. 5. That it shall be the duty of the Secretary of State to procure, as soon as possible after the passage of this act, through the American minister at Paris or otherwise all such evidence and documents relating to the claims above mentioned as can be
69 obtained from abroad; which together with the like evidence and documents on file in the Department of State, or which may be filed in the department, may be used before the court by the claimants interested therein, or by the United States, but the same shall not be removed from the files of the court; and after the hearings are closed the record of the proceedings of the court and the documents produced before them shall be deposited in the Department of State.

SEC. 6. That on the first Monday of December in each year the court shall report to Congress, for final action, the facts found by it, and its conclusions of all cases which it has disposed of and not previously reported.

Such findings and report of the court shall be taken to be merely advisory as to the law and facts found, and shall not conclude either the claimant or Congress; and all claims not finally presented to said court within the period of two years limited by this act shall be forever barred; and nothing in this act shall be construed as committing the United States to the payment of any such claims.

Approved January 20th, 1885.

PLAINTIFFS' EXHIBIT F.

(Filed with depositions.)

THE STATE OF MARYLAND, } *&c.:*
Baltimore City, }

The subscriber, register of wills for Baltimore city, doth hereby certify that it appears by the records in his office, that letters of administration, *de bonis non* with the will annexed of all the goods, chattels, credits and personal estate of Samuel Smith, deceased, was on the seventh day of April, in the year of our Lord one thousand eight hundred and eighty-five, granted and committed unto Robert Carter Smith, who was then and there appointed administrator *de bonis non* with the will annexed of the said deceased.

Said letters are still in force and unrevoked.

In testimony whereof, I hereunto subscribe my name and
[L. S.] affix the seal of my office this twenty-second day of December, in the year of our Lord eighteen hundred and ninety-nine.

STEPHEN R. MASON,
Register of Wills for Baltimore City.

COMPLAINANTS' EXHIBIT EXAMINER No. 1.

(Filed with depositions.)

French spoliation.

In the Court of Claims.

ESTHER S. BUCHANAN, Administratrix *de bonis non* Estate of William Buchanan, Deceased,
vs.
THE UNITED STATES.
} No. 381.

70 *Petition.*

Filed November 3, '85. J. R.

Owner: Ship "Jane" and cargo.

The honorable judges of the Court of Claims:

The petition of Esther S. Buchanan respectfully shows:

I. That she is a citizen of the United States; that on the twenty-fifth day of May, in the year eighteen hundred and eighty-five, she was duly appointed and qualified by the orphans' court, of Baltimore city, Maryland, administratrix *de bonis non* of the estate of William B. Buchanan, late of Baltimore Maryland deceased, a duly authenticated copy of the record of which appointment is filed herewith, that the said Wm. B. Buchanan was a citizen of the United States and survivor of the firm of Smith & Buchanan.

II. That the ship, "Jane" of two hundred and fourteen tons burthen, a duly registered vessel of the United States, of which John Wallace was master one-half was owned by S. Smith and Buchanan and the other half by John Hollins deceased sailed upon a lawful voyage in the year seventeen hundred and ninety-eight, bound from Jamaica to Baltimore Maryland, laden with a cargo of coffee, rum and sugar, the property of the said S. Smith and Buchanan and one Edward Suise, seven-eighths of which belonged to the said S. Smith and Buchanan; that in the prosecution of said voyage she was illegally captured on or about the twenty-ninth day of July, seventeen hundred and ninety-eight, by a French privateer called La Pabo, commanded by one Bonche and carried into the port of Havana, in the island of Cuba, and said vessel and cargo disposed of by the French captors without legal sentence or decree of condemnation against the protest of the captain thereof, and thereby became a total loss to the owners thereof, that such capture, condemnation and sale was in violation of the law of nations and the treaties between the United States and France.

III. That the said S. Smith and Buchanan had a valid and admitted claim for indemnity upon the French Republic for such illegal capture, condemnation and confiscation prior to the ratification

of the convention between the United States and the French Republic, concluded on the thirtieth day of September; eighteen hundred, the ratifications of which were exchanged on the thirty-first day of July following; that this claim, as appears from the averments herein contained, was not embraced in the convention between the United States and the Republic of France, concluded on the thirtieth day of April, eighteen hundred and three; it was not a claim growing out of the acts of France, allowed and paid in whole or in part under the provisions of the treaty between the United States and Spain, concluded on the twenty-second day of February, eighteen hundred and nineteen; and that it was not allowed in whole or in part under the provisions of the treaty between the United States and France, concluded on the fourth of July, eighteen hundred and thirty-one; neither said claim, nor any part thereof, has ever been paid to the said S. Smith and Buchanan, nor to the legal representatives of either of them.

71 IV. That no assignment or transfer of said claim, or any part thereof, or any interest therein, has ever been made; that said petitioner as administratrix as aforesaid, is justly entitled to the amounts hereinafter claimed from the United States, after allowing all just credits and offsets; and that the claimant, your petitioner, believes the facts as stated in this petition are true.

V. That the said vessel, at the date of the capture aforesaid, was of the value of nine thousand four hundred and eleven dollars and seventy-six cents, including the premium of insurance paid on the same, and the one-half interest of said S. Smith and Buchanan being four thousand seven hundred and five dollars and eight cents, that the proportion of the said cargo belonging to the said S. Smith and Buchanan including the premium of insurance paid on the same, was of the value of thirty-three thousand and nineteen dollars, from which deduct the amount received from the insurance company of thirteen thousand, eight hundred and forty-five dollars and fifty cents, leaves a balance of nineteen thousand one hundred and seventy-three dollars and fifty cents on account of the said cargo; that the freight was reasonably worth eight thousand four hundred and seventy dollars and fifty-eight cents, including the premium of insurance paid on the same, and the one-half interest of the said S. Smith and Buchanan being four thousand, two hundred and thirty-five dollars and twenty-nine cents making in the aggregate the sum of twenty-eight thousand one hundred and fourteen dollars and sixty-seven cents.

And your petitioner prays that the sum of twenty-eight thousand, one hundred and fourteen dollars and sixty-seven cents may be found to be due your petitioner, and that the United States is liable therefor.

WM. E. EARLE,
FRANK P. CLARK,
JOHN E. SEMMES,
Plaintiff's Attorneys.

CITY OF BALTIMORE, }
State of Maryland, } *ss:*

Before me personally appeared Esther S. Buchanan, the above-named petitioner, and made oath that the matters averred on her own personal acknowledge in the foregoing petition are true, and those stated upon information and belief, she believes to be true.

ESTHER S. BUCHANAN.

Sworn to before me this second day of November A. D. 1885.

[SEAL.] MURRAY HANSON,
Notary Public.

COMPLAINANTS' EXHIBIT EXAMINER No. 2.

(Filed with deposition.)

In the Court of Claims.

ESTHER S. BUCHANAN, Adm'x *d. b. n.* of Wm. B. Buchanan, Deceased,
vs.
THE UNITED STATES.
} French Spoliations. Nos. 381 & 525.

72 Baltimore Oct. 19th 1888 at the office of John Stewart, No. 213 St. Paul street, Baltimore, Md. Present for the plaintiffs Rob't Riddle Brown and Charles W. Russell for United States.

ESTHER S. BUCHANAN, called as a witness by the petitioner being duly sworn deposeth and saith as follows, that is to say:

Question by commissioner. State your name, age and residence?

Ans. Esther S. Buchanan; I am 43 years old; I reside at Baltimore.

1 question by petitioner's counsel. What interest, if any, have you in the subject-matter of these proceedings?

1 Ans. I am the daughter of Wm. B. Buchanan and administratrix *d. b. n.* of his estate.

2 question. State what you know of a partnership known as S. Smith and Buchanan, who were the members of it and who was the survivor?

2 Ans. The firm consisted of James A. Buchanan, my grandfather, Samuel Smith, and William B. Buchanan my father. Samuel Smith was the brother of my grandmother on my mother's side, William B. Buchanan my father was the survivor of the firm.

(Objected to as hearsay.)

3 question. State where the *this* firm was in business and when to the best of your information?

3 Ans. In the city of Baltimore during the last part of the last century and the first part of this century. I think the firm carried on business on Gay street.

4 question. State if you have ever heard of any claims the said

firm had for losses committed by the French by spoliations and where and how you heard it?

4 Ans. I have heard my father state it from my earliest recollection that he had these claims and that they would come to us if they were ever paid. I have also heard my uncle, my father's brother, Samuel Smith Buchanan speak of it.

(Objected to as hearsay.)

Cross-examination by RESPONDENT'S COUNSEL:

1 X question. In what year did the firm of Smith and Buchanan fail?

1 X Ans. I don't know.

2 X question. I suppose you know the fact, though not the time?

2 X Ans. I do.

73 General question. Do you know any other matter or thing in reference to this claim?

Ans. I do not.

ESTHER S. BUCHANAN.

There appeared before me, G. Morris Bond, a commissioner of the United States, Esther S. Buchanan, the signer of the above deposition, personally known to me, and made oath to the truth of the same this 19th day of October, 1888.

[SEAL.]

GEORGE MORRIS BOND,
United States Commissioner for Maryland.

Endorsements: Spo. 381, Esther S. Buchanan, adm'x *v.* U. S. Ship Jane, Jno. Wallace. Deposition of E. S. Buchanan. Filed Nov. 1, 1888. A true copy.

[L. SEAL.] In testimony whereof I have hereunto set my hand and affixed the seal of the Court of Claims, this 29th day of March, A. D. 1900.

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

I, Charles C. Nott, Chief Justice of the Court — Claims, certify that the foregoing attestations of John Randolph assistant clerk of said court is in due form.

CHARLES C. NOTT,
Chief Justice.

COMPLAINANTS' EXHIBIT EXAMINER No. 3.

(Filed 11th June, 1900.)

In the Court of Claims.

ESTHER S. BUCHANAN, Adm'x of William B. Buchanan, Deceased, *vs.* THE UNITED STATES. } French Spoliations. No. 381.

Ship Jane.

I hereby certify that on this — day of June 1888 before me a notary public of the State of Maryland in and for the city of Baltimore personally appeared Esther S. Buchanan who made oath in due form of law.

1st. That she is the Esther S. Buchanan to whom the orphans' court of Baltimore city did, on the 25th day of May 1885, commit letters of administration on the estate of William B. Buchanan, deceased.

2nd. That she is the daughter of the said William B. Buchanan, who was the William B. Buchanan named in the said pe-
74 tition as the surviving member of the firm of S. Smith & Buchanan which sustained heavy losses from French spoliations in the latter part of the last and the beginning of the present century; that the said William B. Buchanan died April 30th 1857; that he was the surviving member of the firm of S. Smith & Buchanan.

3rd. That she has frequently heard her father say that he had large claims against the United States on account of French spoliations growing out of the seizures of the vessels of the firm of S. Smith & Buchanan of which firm she has repeatedly heard him speak as the firm of which he was a member; that it has been the hope and expectation of her family since her earliest recollection that these claims some time or other would be paid which she is now prosecuting as administratrix *d. b. n.* aforesaid.

ESTHER S. BUCHANAN.

Test: THOS. KELL BRADFORD.
FRANK P. CLARK.

There personally appeared also at the same time Robert Carter Smith and made oath in due form of law that he is the Robert Carter Smith to whom the orphans' court of Baltimore city did on the 7th day of April 1885 commit letters of administration *d. b. n. c. t. a.* on the estate of Samuel Smith, deceased.

2nd. That he is a grandson of the said Samuel Smith who was the Samuel Smith who was the senior member of the firm of S. Smith & Buchanan which sustained heavy losses from French spoliations

in latter part of the last and the beginning of the present century; that the said Sam'l Smith died in 1839;

3rd. That John Spear Smith who was the executor of the said Samuel Smith was the father of this affiant, and that a sword which was voted to his grandfather Samuel Smith by the Congress of the United States was left under his will to his father and by him left to this infant and that he now has the said sword in his possession.

4th. That he remembers his grandfather well being about sixteen years old when he died and that he has heard him repeatedly speak of the firm of S. Smith & Buchanan, and repeatedly say that it consisted of himself, Samuel Smith, James A. Buchanan and William B. Buchanan, the exact date when the last named became a member of the firm he does not know. He further says that he has over and over again heard his grandfather Samuel Smith say that his firm of S. Smith & Buchanan and he himself individually had large claims against the U. S. Government on account of French spoliations. He has heard him also say that he Samuel Smith was interested in similar claims owned by Smith & Hollins and Smith & Spear. Also in similar claims owned by Samuel & John Smith, Jr.

Also that it has been the hope and expectation of his family from the earliest recollection that these claims some time or other would be paid which he is now prosecuting as administrator *d. b. n.* aforesaid.

R. CARTER SMITH.

Test: THOS. KELL BRADFORD.
FRANK B. CLARK.

75 There personally appeared also at the same time John E. Semmes and made oath in due form of law that he has examined the records of the orphans' court of Baltimore city and that, as shown by said records, General Samuel Smith dies in the year 1839, testate, appointing John Spear Smith his executor, that among other bequests in his will he gives the sword presented to him by the Congress of the United States to his son John Spear Smith.

That as appears by said records said John Spear Smith is dead and letters *d. b. n. c. t. a.* were granted to Robert Carter Smith on the 7th day of April 1885 upon the estate of the said General Samuel Smith for the purpose of prosecuting the French spoliation claims.

That said affiant has examined the directories of the city of Baltimore for the years 1796, 1799, 1800 and 1801 and finds that but one Samuel Smith appears in said directories who is designated as a merchant doing business in the name of S. Smith & Buchanan at No. 12 Gay street and who was also a member of the firm of Samuel and John Smith, said Samuel Smith resided at No. 37 Water street in the said city of Baltimore.

That there appears also by the records of the orphans' court of Baltimore city that James A. Buchanan died in 1840, testate; that George William Brown is the administrator *c. t. a.* that by his will he devised and bequeathed all of his property to Samuel Smith

Buchanan and that among his debts is one due by Wm. B. Buchanan, who is stated to be living at the date of this inventory in 1842.

JOHN E. SEMMES.

Test: THOS. KELL BRADFORD.
FRANK P. CLARK.

Sworn to before me the day and date aforewritten.
In testimony whereof I have hereunto affixed my official seal.

[SEAL.] THOS. KELL BRADFORD.
Notary Public.

Endorsements: No. 381 spoliation. Court of Claims. Esther S. Buchanan, adm'r'x, *vs.* United States. Ship Jane Wallace. Proof of identity of Wm. B. Buchanan and as survivor of firm S. Smith & Buchanan also proof of identity as to Samuel Smith. Filed June 15, 1888. Wm. E. Earle, Washington, D. C. A true copy.

In testimony whereof I have hereunto set my hand and affixed the seal of the Court of Claims, this 29 day of March A. D. 1900.

[L. SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.

76 I, Charles C. Nott Chief Justice of the Court of Claims certify that the foregoing attestation of John Randolph, assistant clerk of said court is in due form.

CHARLES C. NOTT,
Chief Justice.

COMPLAINANTS' EXHIBIT EXAMINER No. 4.

(Filed with deposition.)

In the Court of Claims.

ESTHER S. BUCHANAN, Administratrix Estate of William B. Buchanan, Deceased; William Donnell, Administrator *d. b. n., c. t. a.*, Estate of John Donnell, Deceased; Jane G. Howard and Susan S. Hoffman, Administratrices *d. b. n., c. t. a.*, Estate of Robert Gilmore, Deceased; Cumberland D. Hollins, Administrator *de bonis non* Estate of John Hollins, Deceased, vs. THE UNITED STATES.	French Spoilation.	No. 2011.

Petition.

Filed September 29, '86. J. R.

Owners, cargo, ship Patapsco.

To the honorable the judge of the Court of Claims:

The petition of Esther S. Buchanan, William Donnell, Jane G. Howard, Susan Hoffman, and Cumberland D. Hollins respectfully shows:

I. That they are citizens of the United States; that on the twenty-fifth day of May, A. D. eighteen hundred and eighty-five, the petitioner, Esther S. Buchanan was duly appointed and qualified by the orphans' court, of Baltimore city, Maryland, as the administratrix of the estate of William B. Buchanan, late of Baltimore city; that the said William B. Buchanan was the surviving partner of the firm of S. Smith & Buchanan, all citizens of the United States; that on the twelfth day of June, eighteen hundred and eighty-six, the petitioner, William Donnell, was duly appointed and qualified by the aforesaid court, as the administrator *de bonis non cum testamento annexo*, of the estate of John Donnell, late of Baltimore, a citizen of the United States; that on the twenty-ninth day of April, eighteen hundred and eighty-five, the petitioners, Jane G. Howard and Susan S. Hoffman, were duly appointed and qualified by the aforesaid court as the administratrices *de bonis non cum testamento annexo*, of the estate of Robert Gilmore late of Baltimore, deceased, that the said Robert Gilmore was the surviving partner of the firm of Robert Gilmor & Co., said firm being composed of Robert Gilmor Robert Gilmor Jr. and William Gilmore each a citizen of the United
77 States; that upon the twenty-fourth day of December, eighteen hundred and eighty-five, the petitioner, Cumberland D. Hol-

lins, was duly appointed and qualified by the aforesaid court as the administrator *de bonis non*, of the estate of John Hollins late of Baltimore, a citizen of the United States.

II. That the ship "Patapsco," of two hundred and thirty and sixty ninety-fifths tons burthen, a duly registered vessel of the United States of which Joshua William Hill was master, and owned by sundry parties, residents of Baltimore, for whom a separate petition has been drawn, sailed upon a lawful voyage in the month of November, seventeen hundred and ninety-eight, bound from the port of Baltimore, Maryland, to London, England, laden with a valuable cargo of coffee, cotton, sugar and cochineal, belonging to the following parties in the proportions herein stated, to wit:

Forty-one (41) bales of cotton, of the value of twenty hundred and ninety-six dollars and thirty-two (2,096.32) cents, owned equally by the said John Donnell and the firm of S. Smith & Buchanan. Seventy hogshead- and twelve hundred and thirty-three sacks of coffee, valued at fifty-six thousand, two hundred and ninety-five dollars and ($56,295.80) eighty cents, one-half of which was the property of S. Smith & Buchanan.

Twenty-eight (28) packages or bales of cochineal, of the value of twenty-eight thousand ($28,000) dollars, the sole property of Robert Gilmor & Co.

One hundred boxes or cases of white Havana sugar, of the value of seven thousand and twenty-three dollars and ($7,023.42) forty-two cents, the property of said John Hollins.

That in the due prosecution of the aforesaid voyage she was illegally captured on or about the seventeenth day of December, seventeen hundred and ninety-eight, by two French privateers called the Escamateur "and the Furet" both of Boulange and carried into the port of Dieppe, and both vessel and cargo condemned and sold as a good prize to the captors by the French tribunal of commerce, established and sitting at Dieppe, against the protest of the master, and became thereby a total loss to the owners thereof; that such capture, condemnation and sale was in violation of the law of nations, and the treaties between the United States and France.

III. That the said S. Smith & Buchanan, John Donnell, Robert Gilmor & Co., and John Hollins had a valid and admitted claim for indemnity against the French Republic, prior to the ratification of the treaty between the United States and the French Republic, concluded on the thirtieth day of September eighteen hundred, the ratifications of which were exchanged on the thirty-first day of July following; that this claim, as appears from the averments herein contained was not embraced in the convention between the United States and the Republic of France, concluded on the thirtieth day of April, eighteen hundred and three; that it was not a claim allowed, in whole or in part, under the provisions, of the treaty between the United States and Spain, concluded on the twenty-second day of February, eighteen hundred and nineteen; that it was not a claim allowed
or paid, in whole or in part, under the provisions of the
78 treaty between the United States and France, of the fourth of July, eighteen hundred and thirty-one; neither said claim

nor any part thereof, has ever been paid to the said S. Smith & Buchanan, John Donnell, Robert Gilmor & Co. and John Hollins, nor to the legal representatives of any of them.

IV. That no assignment or transfer of said claim, nor any interest therein, has ever been made; that said petitioners, as administrators aforesaid, are justly entitled to the amounts hereinafter claimed from the United States, after allowing all just credits and offsets; and that the claimants, your petitioners, believe the facts as stated in this petition are true.

V. That the value of the said goods and merchandise, the property of the aforesaid parties, at the date of the captive aforesaid, was of the value of sixty-five thousand two hundred and sixty-seven dollars and ($65,267.64) sixty-four cents.

And your petitioners pray that the said sum of sixty-five thousand, two hundred and sixty-seven dollars and ($65,267.64) sixty-four cents may be found due them on account hereof, and that the United States is liable therefor to wit:

Twenty-eight thousand ($28,000) dollars as administratrices of Robert Gilmore.

Seven thousand and twenty-three dollars and ($7,032.42) forty-two cents, as the administrator of John Hollins.

Twenty-nine thousand one hundred and ninety-six dollars and ($29,196.06) six cents as administratrix of William B. Buchanan.

One thousand and forty-eight dollars and ($1,048.16) sixteen cents, as the administrator of John Donnell.

WM. E. EARLE,
FRANK P. CLARK,
JOHN & DAVID STEWART,
JOHN E. SEMMES,
Plaintiff's Attorneys.

STATE OF MARYLAND, *City of Baltimore*, } ss:

Before me personally appeared Cumberland D. Hollins, one of the above-named petitioners, and made oath that the matters averred in the foregoing petition on his own personal knowledge are true, and those stated on information and belief he believes to be true.

CUMBERLAND D. HOLLINS.

Sworn to before me, this first day of October, A. D. eighteen hundred and eighty-six.

WM. H. BAYZARD,
Notary Public.

COMPLAINANTS' EXHIBIT EXAMINER No. 5.

(Filed with depositions.)

UNITED STATES OF AMERICA,
TREASURY DEPARTMENT, *April* 5, 1900.

79 Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed are true copies of certificates of the

Court of Claims in the case of Esther S. Buchanan, administratrix, etc., on file in this department.

In witness whereof, I have hereunto set my hand, and [L. SEAL.] caused the seal of the Treasury Department to be affixed, on the day and year first above written.

W. O. B. L. J. GAGE,
T *Secretary of the Treasury.*

L. J. S. M. G.

Court of Claims.

No. 381.

French spoliation cases.

Vessel, ship Jane.

Master, John Wallace.

In the matter of the application of Frank P. Clark, Esq., attorney of record for Esther S. Buchanan, administratrix, representing Smith and Buchanan, deceased, for a certificate of the court under the act of March 3, 1899.

The defendants having been heard thereon, this court orders that the following certificate be issued to the Secretary of the Treasury.

To the Secretary of the Treasury:

The Court of Claims hereby certifies that it appears by evidence on file in the above-entitled case that said Esther S. Buchanan on whose behalf an appropriation, or award was made by the act of March 3, 1899, entitled "An act for the allowance of certain claims for stores and supplies reported by the Court of Claims under the provisions of the act approved March third, eighteen hundred and eighty-three, and commonly known as the Bowman act, and for other purposes," for the sum of eleven thousand six hundred and sixty dollars and twenty-one cents ($11,660.21) represents the next of kin of William B. Buchanan, the surviving member of the firm of Samuel Smith & Buchanan, deceased, the original owner of the claim upon which said award was made.

And the court further certifies that it appears on the record of the said case that at the time when the award of this court was made the said claim was not held by assignment or owned by an insurance company.

In testimony whereof I have hereunto set my hand and [SEAL.] affixed the seal of said court at Washington, this 15th day of June, A. D. 1899.

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

80 Court of Claims, No. 2011, French Spoliation Cases.

Vessel, ship Patapsco.

Master, William Hill.

In the matter of the application of Frank P. Clark Esq., attorney of record for Esther S. Buchanan, administratrix of the estate of William B. Buchanan, who was the surviving partner of the firm of S. Smith and Buchanan, deceased, for a certificate of the court under the act of March 3, 1899.

The defendants having been heard thereon, the court orders that the following certificate be issued to the Secretary of the Treasury:

To the Secretary of the Treasury:

The Court of Claims hereby certifies that it appears by evidence on file in the above-entitled case that said Esther S. Buchanan, on whose behalf an appropriation, or award, was made by the act of March 3, 1889, entitled "An act for the allowance of certain claims for stores and supplies reported by the Court of Claims under the provisions of the act approved March third, eighteen hundred and eighty-three, and commonly known as the Bowman act, and for other purposes," for the sum of twenty-five thousand and fifty-six dollars ($25,056.00) represents the next of kin of William B. Buchanan, surv. part., etc., deceased the original owner of the claim upon which said award was made.

And the court further certifies that it appears on the record of the said case that at the time when the award of this court was made the said claim was not held by assignment or owned by an insurance company.

In testimony whereof I have hereunto set my hand and [SEAL.] affixed the seal of said court at Washington, this 15th day of June, A. D. 1899.

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

COMPLAINANTS' EXHIBIT EXAMINER No. 6.

(Filed with depositions.)

UNITED STATES OF AMERICA,
TREASURY DEPARTMENT, *April* 5, 1900.

Pursuant to section 882 of the Revised Statutes I hereby certify that the annexed are true copies of Treasury certificates of accounts Nos. 53239 and 53274, French spoliation claim-, in favor of Esther S. Buchanan, administratrix, etc. on file in this department.

In witness whereof, I have hereunto set my hand and [L. SEAL.] caused the seal of the Treasury Department to be affixed on the day and year first above written.

L. J. GAGE,
T. *Secretary of the Treasury.*

W. O. B.
L. J.
S. M. G.

81 *Certificate, French Spoliation Claims.*

McD.

Judicial No. 53239.

TREASURY DEPARTMENT,
OFFICE OF THE AUDITOR FOR THE STATE
AND OTHER DEPARTMENTS, *June* 26, 1899.

I hereby certify, that I have examined and settled an account between the United States and Esther S. Buchanan administratrix representing Smith and Buchanan and find that the sum of eleven thousand six hundred, sixty and $\frac{21}{100}$ dollars is due from the United States to him being amount appropriated by act of March 3, 1899 (public — No. 190), to pay the finding of the Court of Claims in his favor for indemnity for spoliation by the French prior to July 31, 1801, on the ship Jane the proofs required by said act having been duly furnished, which sum is payable from the appropriation for "payment of French spoliation claims," act of March 3, 1899. Let a warrant for the amount be remitted to her in care of Frank P. Clark attorney $11,660\frac{21}{100}$.

W. O. B.

ERNEST G. TIMME,
Auditor for the State and Other Departments,
By G. W. ESTERLY,
Deputy Auditor.

To the Secretary of the Treasury.

(Division of book-keeping and warrants.)

H.

JUN- 28, 1899.

Drawn on Washington for $11,660.21.

ELLIS H. ROBERTS,
Treasurer U. S.

DEFENDANT'S EXHIBIT EXAMINER A A.

(Filed 11th June, 1900.)

In the Court of Claims.

ESTHER S. BUCHANAN, Adm'x of William B. Buchanan, Deceased, vs. THE UNITED STATES. } French Spoliations. No. 381.

Reply of Treasury Department in the Above-entitled Case. Filed December 17, 1885.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
WASHINGTON, D. C., *December* 15, 1885.

To the chief clerk U. S. Court of Claims.

SIR: In answer to the rule of the Court of Claims in the
82 cause of Esther S. Buchanan, French spoliation, No. 381, I transmit herewith duly authenticated copies of the following papers viz:

1. Register of the ship "Jane" registered at the port of Baltimore, June 15, 1797.
2. Manifest of said vessel dated June 15, 1797.

Respectfully yours, C. S. FAIRCHILD,
Assistant Secretary.

UNITED STATES OF AMERICA,
TREASURY DEPARTMENT, *December* 15, 1885.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed are true copies of papers on file in this department.

In witness whereof, I hereunto set my hand, and caused
[SEAL.] the seal of the Treasury Department to be affixed on the day and year first above written.

D. MANNING,
Secretary of the Treasury.

Permanent.

No. 118,
One hundred and eighteen. Cr. 8 Decem., 1801.

Vessel condemned by the French and register detained.

In pursuance of an act of Congress of the United States of America, entitled, "An act concerning the registering and recording of ships or vessels," John Hollins of the city of Baltimore State of Maryland, merchant, having taken or subscribed the oath required by the said act, and having sworn that he together with Samuel Smith and James A. Buchanan aforesaid merchants are the only owners of the ship or vessel called the Jane of Baltimore, whereof John Smith is

at present master, and is a citizen of the United States, as he hath sworn and that the ship or vessel was built at Baltimore in the State of Maryland in the year 1790 as appears by register number 230 issued at this port the 7th December 1796 now surrendered the property being transferred.

And it also appears by said register that the said ship or vessel her length is eighty-three feet six inches, her breadth twenty-four feet four inches, her depth twelve feet two inches and that she measures two hundred and fourteen tons; that she is a square-sterned ship and has a woman figure-head; and the said John Hollins having agreed to the description and admeasurement above specified, and sufficient security having been given according to the said act, the said ship has been duly registered at the port of Baltimore.

Given under my hand and seal at the port of Baltimore
83 this fifteenth day of June, in the year one thousand seven hundred and 90 seven.

	June	15	1797	118	Ship	Jane	Jno. Hollins & Co.	214	Vessel condemned by the French at Havana Regr. detained proved 8th December, 1801.

A true copy.

[L. SEAL.] In testimony whereof I have hereunto set my hand and affixed the seal of the Court of Claims, this 29th day of March A. D. 1900.

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

I, Charles C. Nott, Chief Justice of the Court of Claims, certify that the foregoing attestation of John Randolph, assistant clerk of said court, is in due form.

CHARLES C. NOTT,
Chief Justice.

DEFENDANTS' EXHIBIT EXAMINER B B.

(Filed with depositions.)

In the Court of Claims.

ESTHER S. BUCHANAN, Administratrix Estate of William B. Buchanan, Deceased; William Donnell, Administrator *d. b. n., c. t. a.*, Estate of John Donnell, Deceased; Jane G. Howard and Susan S. Hoffman, Administracies *d. b. n., c. t. a.*, Estate of Robert Gilmer, Deceased; Cumberland D. Hollins, Administrator *de bonis non* Estate of John Hollins, Deceased,
vs.
THE UNITED STATES.

French Spoliations. No. 20111.

Reply of Treasury Department in the Above-entitled Case. Filed October 13, 1886.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
WASHINGTON, D. C., *October* 12*th*, 1886.

To the honorable the chief justice and judges of the Court of Claims:

In answer to the rule of your honorable court in the case of
84 Esther S. Buchanan, adm'x, &c., against the United States, No. 2011 French spoliation, I have the honor to transmit herewith copies of the papers desired, duly authenticated under the seal of this department.

Respectfully yours, HUGH S. THOMPSON,
Assistant Secretary.

UNITED STATES OF AMERICA,
TREASURY DEPARTMENT,
WASHINGTON, D. C., *October* 12*th*, 1886.

Pursuant to section 882 of the Revised Statutes I hereby certify that the annexed are true copies of papers now on file in this department.

In witness whereof, I have hereunto set my hand, and
[SEAL.] caused the seal of the Treasury Department to be affixed, on the day and year first above written.

S. S. FAIRCHILD,
Acting Secretary of the Treasury.

No. 122, one hundred and twenty-two.

Secr. 21st Oct., 1804.
New owners.

Permanent.

In pursuance of an act of the Congress of the United States of America, entitled "An act concerning the registering and recording of

ships or vessels," James A. Buchanan of the city of Baltimore, State of Maryland, having taken or subscribed the oath required by the said act, and having sworn that he together with Samuel Smith and John Donnell of Baltimore aforesaid, merchants, are the only owners of the ship or vessel called the Patapsco of Baltimore, whereof Joseph Mitchell is at present master, and that the said ship or vessel was built at Rhode River in the county of Anne Arundel and State of Maryland in the year 1796 as also appears by the attestation of James Carroll under whose direction she was built.

And Daniel Delozeer, surveyor of the port, having certified that the said ship or vessel has two decks and three masts, and that her breadth — twenty-four feet ten inches, her depth — and that she measures two hundred and thirty tons, and sixty-seven ninety-fifth parts of a ton, that she is a square-sterned ship, has a round deck and no figure-head; and said James A. Buchanan having agreed to the description and admeasurement above specified, and sufficient security having been given according to the said act the said ship has been duly registered at the port of Baltimore.

Given under my hand and seal at the port of Baltimore this twenty-first day of June, in the year one thousand seven hundred and ninety-seven.

85 *Weights.*

Pts.	Coffee.			Cotton.			Sugar.
	Hhds.	Bags.	Lbs.	Bales.	Lbs.	Boxes.	Lbs.
1956	20	280	48,752				
1957	20	135	14,754				
1983						100	39,019 lbs.
1954	50	818	123,303				
1979				41	4964		
1953						335	133,439
	70	1233	186,809				172,458

Manifest of the Cargo Board the Ship Patapsco, Joshua W. Hill, Master, Bound to London.

70 hogsheads coffee	$16,777 21
1233 bags "	39,191 04
435 boxes sugar	4,000 00
41 bailes cotton	1,200 00
28 " cochineal	28,000 00
	89,168 25

BALTIMORE, *5th November*, 1798.

Sworn before R. Surviance, *D. C. M.*
230 tons
10 guns
20 men

JOSHUA W. HILL.

A true copy.

In testimony whereof I have hereunto set my hand and affixed the seal of the Court of Claims, this 29th day of March A. D. 1900.

[L. SEAL.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

I, Charles C. Nott, Chief Justice of the Court of Claims, certify that the foregoing attestation of John Randolph assistant clerk of said court is in due form.

CHARLES C. NOTT,
Chief Justice.

DEFENDANTS' EXHIBIT EXAMINER C C.

(Filed with depositions.)

Samuel Smith, James A. Buchanan, and William B. Buchanan
to
Thomas Elliott and Jonathan Meridith.
} Deed of Trust.

This indenture, made this ninth day of November in the year of our Lord one thousand eight hundred and twenty, between
86 Samuel Smith, James A. Buchanan, and William B. Buchanan, all of the city of Baltimore, in Baltimore county, and State of Maryland, merchants, copartners trading under the firm of S. Smith & Buchanan, of the one part and Thomas Ellicott and Jonathan Meredith both of the city of Baltimore, aforesaid of the other part witnesseth;

That for and in consideration of the *same* of five dollars, lawful money, apiece to the parties hereto of the first part, respectively paid by the parties hereto of the second part at or before the sealing and delivery hereof, the receipt whereof the said parties hereto of the first part do hereby severally and respectively acknowledge the said Samuel Smith, James A. Buchanan, and William B. Buchanan have, and each of them hath given, granted, bargained, and sold, aliened, enfeoffed, conveyed, assigned, transferred, set over, and confirmed, and by these presents do, and each of them doth, give, grant bargain and sell, alien, enfeoff, convey, assign transfer, set over, and confirm unto the said Thomas Ellicott and Jonathan Meridith, their heirs, executors, administrators, and assigns, all and singular the real and personal estates and property of or belonging to the said Samuel Smith, James A. Buchanan, and William B.

Buchanan, in the said copartnership capacity of S. Smith & Buchanan, and all and singular the goods, wares, merchandise, chattels, and effects of every or any nature kind, or description whatsoever of or belonging to the said S. Smith & Buchanan, as copartners aforesaid, whatsoever the same is, are, or may be, and all and every the debts, claims, or sums of money due owing belonging, or payable to them, the said S. Smith & Buchanan, and all deeds, books of account, bonds, bills, notes vouchers, evidences, and writings whatsoever touching or concerning the same hereby granted and assigned estate effects, property and premises or any part thereof, and all the rights, title interest, use trust, equity of redemption, property, claim and demand whatsoever of said Samuel Smith, James A. Buchanan, and William B. Buchanan, and each of them, of in, unto, and out of the same hereby granted and assigned premises and every or any part thereof, to have and to hold, receive and take all and singular the estate and estates effects and property, goods, chattels, debts, sums of money and claims hereby conveyed, assigned, and transferred, and all benefit to be had, obtained or gained thereby or therefrom in anywise unto the said Thomas Ellicott and Jonathan Meredith, and the survivors of them and the heirs, executors, administrators and assigns of the survivor henceforth forever upon special trust and confidence nevertheless, and to, for and upon the uses and the ends, intents and purposes, and under and subject to the powers and provisos, and limitations hereinafter mentioned, expressed and declared of and concerning the same premises, and to, for, or upon no other use, trust, intent, or purpose whatsoever, and for the better enabling the parties hereto of the second part to carry into effect the trusts hereby intended to be reposed in them, the said Samuel Smith, James A. Buchanan, and William B. Buchanan, have, and each of them hath, constituted and appointed, and by these presents do, and each of them doth, constitute and appoint in their place and stead, put and dispute the said Thomas Elli-
87 cott and Jo*h*athan Meredith, and the survivor of them, and the heirs, executors and administrators of the survivor jointly and severally to be the true and lawful attornies and attorney irrevocable of the said Samuel Smith, James A. Buchanan and attorney irrevocable of the said Samuel Smith, James A. Buchanan and William B. Buchanan, and in their names or in the names of the said attorneys and trustees, or of either of them, or the legal representatives of the survivor as the case may be and require, but to the uses hereinafter expressed forthwith to demand, collect, receive, and by all lawful ways and means whatsoever, recover and get into their hands, custody, possession, and power, all and singular, the estate and estates, property chattels, effects goods merchandise, debts and sums of money hereby conveyed, assigned, and tran-ferred or meant, mentioned, and intended hereby so to be, except such parts or portions of the same as were heretofore mortgaged or conveyed in trust by the firm of S. Smith & Buchanan to William Patterson, John Donnell, and John Spear Smith, of Baltimore, aforesaid, for indemnifying them against loss on account of their endorsement of certain promissory notes to the amount of two hundred and forty thousand

dollars, passed by S. Smith & Buchanan to the president, directors and company of the Bank of the United States and from and after the twenty-first day of April one thousand eight hundred and twenty-four being the period limited for the payment of the last note, so as aforesaid endorsed by the said William Patterson, John Donnell, and John Spear Smith and passed to the president, directors, and company of the Bank of the United States, but not before, to have and receive from the said trustees, namely, William Patterson John Donnell, and John Spear Smith or the survivors or survivor of them or the legal representatives of the survivor, any residue of property so conveyed to them in trust as aforesaid or balance of proceeds therefrom arising, and which may be remaining in their hands, or power, or under their control, after discharging and satisfying therewith the objects of the trust reposed in them; and upon receipt of any property or monies hereby conveyed, assigned, and transferred, good and sufficient acquittances, and discharges for the same in whole or in part, as the case may be, and as the said Thomas Ellicott and Jonathan Meredith, or the survivor of them, or the legal representatives of the survivor may think it expedient and proper to give, to execute and deliver in trust, that the said Thomas Ellicott and Jonathan Meredith, and the survivor of them, and the heirs, executors, and administrators of the survivor shall and will use their reasonable endeavors forthwith to receive, recover, and get into their possession all and singular the estate and property hereby conveyed and assigned, except those parts or portions thereof so as aforesaid conveyed in trust by the said S. Smith and Buchanan to the above-named William Patterson, John Donnell, and John Spear Smith, and *John Spear Smith*, and shall and will, whenever they may deem it most advantageous for those interested therein, make sale and dispose of the estate and property hereby conveyed and assigned except as aforesaid, in such manner and upon such terms as they may think proper, and upon the receipt of the purchase or consideration money therefor execute to the purchaser or purchasers, good and sufficient deeds of conveyance and assignment for any estate, prop-
88 erty, and effects so disposed of, and shall and will at the period limited as aforesaid for that purpose claim and receive from the said William Patterson, John Donnell, and John Spear Smith, or the survivors or survivor of them, or their legal representatives any residue of property so as aforesaid conveyed in trust to them by the said S. Smith & Buchanan or balance of the proceeds therefrom arising then remaining under their control or in their hands after satisfying and discharging thereout the objects of such trust and from and after such sales and receipts upon trust, that the said Thomas Ellicott and Jonathan Meredith, or the survivor of them, or the heirs, executors, or administrators of the survivor shall and will after satisfying themselves thereout the amount of expenses necessarily attending the *the* execution of this trust and also a reasonable commission for their services in the premises, apply so much of the residue of the proceeds of the estate, property, effects, claims, debts, and sums of money hereby conveyed and

assigned as may be necessary to the indemnification of the legal representatives of James Calhoun, lately deceased, and of Leonard Matthews, of Baltimore aforesaid, for from, and against the payment of three promissory notes drawn by Calhoun & Matthews in favour of the said S. Smith & Buchanan and by them endorsed, one of them dated on the sixth, one on the ninth, and the other on the thirteenth day of April, one thousand eight hundred and nineteen; the first for fifteen thousand dollars, the second for twelve thousand dollars, and the third and last for fifteen thousand dollars, payable, respectively at sixty days after date, which said notes amounting to forty-two thousand dollars, were lent by the said Calhoun & Matthews to the said S. Smith & Buchanan, and were discounted for the accommodation of the latter firm at the office of discount and deposit or branch of the Bank of the United States at Baltimore aforesaid, and have been protested for non-payment and from and after such deduction, application, and payment shall and will pay, apply, distribute, and divide the residue of the proceeds arising from or by the sales of the estate and property aforesaid and the collection of the claims, debts, and the sums of money hereby assigned to and amongst all and every such of the creditors of the said S. Smith and Buchanan in their joint or copartnership capacity aforesaid rateably and proportionally, agreeably to the amount of their respective just claims as shall within fifteen months next ensuing the date hereof signify in writing their assent to the terms of this deed and the provision hereby made for them, and execute and deliver to the said Samuel Smith, James A. Buchanan, and William B. Buchanan a full and final release and discharge of and from all claims and demands against them, provided always that the proportion, part or share of such creditor or creditors, if any, of the said S. Smith & Buchanan as shall neglect, refuse or omit to execute such release and discharge as aforesaid, within the term of fifteen months of, and in the nett proceeds aforesaid shall not be distributed or divided amongst the other creditors, but shall be withheld from such distribution by the said trustees, and the proportionate part or share of the president, directors and company of the Bank of the United States therein agreeably to the amount of their claim shall
89 be paid and delivered over to them, notwithstanding their refusal, omission, or neglect to execute such release as aforesaid, and the balance of the said fund shall be by the said trustee paid over to the said S. Smith & Buchanan, or to his assigns, provided, however, that nothing herein contained shall be construed as gra-ting a right, either in law or equity, to the parties hereto of the second part or to the creditors hereby provided for to exercise any power or control over that or those part or parts, portion or portions of the estate, effects, merchandise property, or funds hereby granted, conveyed, or assigned which was or were heretofore conveyed in trust to the within-named William Patterson, John Donnell, and John Spear Smith, or any part of the same, or to claim any interest whatever therein, until the aforesaid twenty-first day of April, one thousand eight hundred and twenty-four unless the objects of the trust so as aforesaid reposed in the said William Patterson, John

Donnell, and John Spear Smith shall have been sooner satisfied and discharged; and it is hereby further agreed and understood by and between all the parties hereto that the said trustees, parties to this deed, shall not be in any manner answerable or accountable for any loss that may happen to the said trust estate and property unless from or by their own willful commission, omission, or neglect. nor shall the one of them be answerable or accountable for the acts, — the other; and the said Samuel Smith, James H. Buchanan, and William B. Buchanan, for themselves, their heirs, executors, and administrators, do hereby covenant, promise, grant, and agree to and with the said Thomas Ellicott and Jonathan Meredith, their heirs, executors, administrators, and assigns, that the said Samuel Smith, James A. Buchanan and William B. Buchanan, and their heirs shall and will at any time or times hereafter, at the reasonable request of the said parties hereto of the second part, or either of them, or their legal representatives, *do* make execute acknowledge and deliver all such further and other acts deeds conveyances, assignments, or transfer- in the law as shall or may be advised or devised and required for the confirmation of these presents, or for the better and more perfectly assuring, conveying, and assigning unto the said Thomas Ellicott and Jonathan Meredith, their heirs, executors, and administrators as joint tenants upon the terms and for the uses hereinbefore expressed and declared, all or any of the estate, effects, property, claims, and funds hereby mentioned to be conveyed, assigned, and transferred according to the purport, true intent, and meaning hereof. In testimony whereof the said Samuel Smith, James A. Buchanan, and William B. Buchanan have hereunto subscribed their names and affixed their seals on the day and year first above written.

S. S. SMITH. [SEAL.]
J. A. BUCHANAN. [SEAL.]
W. B. BUCHANAN. [SEAL.]

Signed, sealed, and delivered in the presence of
W. G. WETHERALL.
WILLIAM SPEAR.

90 STATE OF MARYLAND, } *ss:*
Baltimore County, }

Be it remembered, and it is hereby certified that on this ninth day of November, in the year of our Lord one thousand eight hundred and twenty, before the subscribers, two justices of the peace of the State of Maryland in and for Baltimore county aforesaid, personally appears Samuel Smith, James A. Buchanan, and William B. Buchanan, the parties of the first part named in the foregoing indenture or instrument of writing, and do severally acknowledge the same to be their respective act and deed.

In testimony whereof we hereunto subscribe our names on the day and year aforesaid.

SAM'L FARNANDIS.
JOHN MALLORY.

Rec'd for record the 23rd day of January, 1821 same day recorded and examined.

J. WM. GIBSON, *Clk.*

I hereby certify that the foregoing is a true copy taken from Liber W. G. No. 157 folio 351, etc., one of the land records of Baltimore county (now city) In testimony whereof I have hereto set my hand and affixed the seal of the superior court of Baltimore city this 10th day of November A. D. 1888.

[SEAL.]

JAS. BOND,
Clerk of the Superior Court of Baltimore City.

DEFENDANTS' EXHIBIT EXAMINER D D.

(Filed with deposition.)

Court of Claims.

ESTHER S. BUCHANAN, Administratrix,
vs.
THE UNITED STATES.
} French Spoliations. No. 381. Ship Jane.

Evidence of Claimant.

(Copies from original and official papers on file in the Department of State.)

Memorial.

To the honorable the commissioners appointed under the 11th article of the treaty of amity, settlement, and limits between the United States and His Catholic Majesty, concluded at Washington on the 22nd February, 1819:

The memorial of Thomas Ellicott and Jonathan Meredith, trustees of Samuel Smith, James A. Buchanan, and William B. Buchanan, by deed of trust bearing date the 9th November, 1820, all being of the city of Baltimore and State of Maryland, respectfully represents that the said Samuel Smith and James A. Buchanan, trading under the firm of S. Smith & Buchanan, were in the year 1797, owners
91 of one moiety or half, of the American ship Jane of Baltimore; John Hollins, also of said city of Baltimore, owning the other part; that in the month of December of the same year, they, the said S. Smith & Buchanan, a certain Edmond Suire, also of said city, and the said S. Smith, of said firm of S. S. & Buchanan, having freighted the whole of said ship Jane, then under the command of John Wallace loaded her with a cargo of dry goods, flour, &c., and despatched her to the West Indies; that in the prosecution of said voyage the said ship Jane had arrived at Jacmel, in the island of San Domingo, disposed of a part of her outward cargo, which was invested in coffee and cotton and shipped; that on her way from said port of Jacmel to Acquin, also in said island, the ship Jane was captured by a British frigate and carried into Kingston in the island of Jamaica; that the admiralty court of Jamaica acquitted the said

ship and cargo, with the exception of a few dry goods from which the captors appealed, and bonds were given for the value of the ship and cargo; that the said ship Jane sailed thence on the 20th July 1798 bound to Baltimore, with a cargo of coffee, rum and sugar, and was on the 29th July 1798, captured by the French privateer La Pabo, Captain Banche, who took the said Captain Wallace and five men aboard and ordered his said ship to Havana, in the island of Cuba; that said privateer arrived on the 18th August, 1798 where they found the said ship Jane.

That said Captain Wallace found his ship stripped of everything; that he made repeated application to the Spanish government for redress, but could not get his ship restored or any satisfaction. That said ship Jane and cargo were disposed of by said captors at the said port of Havana without any legal sentance or other decree of condemnation.

That in consequence of said last capture and disposal of said ship Jane and cargo, the said Samuel Smith and S. Smith & Buchanan have been deprived of their property, and your memorialists now claim remuneration from your honorable board for the value of one-half said ship Jane and freight, and further for the residuary interest in the cargo, as more fully shown in annexed statement.

That your memorialists have not, nor have the said S. Smith or S. Smith & Buchanan, or any other person, who may at any time have been entitled to the amount, nor claimed, or any part thereof, within the knowledge of your memorialists, received any sum of money or other equivalent or indemnification for the loss so sustained or for any part thereof, and that the amount hereby preferred, and every part thereof, does now and always, since the time when the deeds of trust before mentioned took place, did belong, and if allowed will go absolutely and solely to your memorialists for the benefit of the creditors of said S. Smith and S. Smith & Buchanan, and to no other person or persons whatsoever.

Your memorialists further represent, as they are credibly informed and do verily believe that the said Samuel Smith and James A. Buchanan composed the then mercantile firm of S. Smith & Buchanan, and are native citizens of the United States of America, domiciliated at and prior to the year 1798 in the city of Baltimore,
92 and have so continued to the present time; that your memorialists themselves are native citizens of the United States of America and have been domiciliated in said city of Baltimore for a length of time.

Your memorialists, in substantiation of the facts and circumstances herein stated, refer your honorable board to the documents and vouchers that will accompany this memorial and those that are filed or will be filed by the Maryland Insurance Company with their memorial in this case No. 1016. Your memorialists therefore earnestly and respectfuly pray that the sum of twenty-six thousand seven hundred and two $\frac{91}{100}$ dollars with interest from the 23rd December, 1797, may be awarded.

THOS. ELLICOTT.
JOHN MEREDITH.

STATE OF MARYLAND,
Baltimore County, Baltimore City, } *sct:*

On this seventeenth day of February, 1823, personally appeared before me, the subscriber a justice of the peace, in and for said city, aforesaid, Thomas Ellicott, who being one of the society of people called Quakers affirmed and at the same time Jonathan Meredith, who made oath on the Holy Evangely of Almighty God, that the facts, circumstances and allegations stated in the foregoing memorial so far as they have come within their own knowledge, are true as stated, and those stated as derived from records or as of the knowledge of others they believe to be true.

And further that they did not know of the above-recited claim until about the time of the last adjournment of the commissioners, from the schedule or inventory which accompanied the deed of trust not containing it and also from the length of time since the loss occurred, all the accounts having been closed in the books of S. Smith & Buchanan, left no means of discovering it and that it was only from the information received from S. Smith, of said firm of S. Smith & Buchanan, that they were now enabled to make the claim.

Affirmed and sworn to before

JOHN F. HARRIS,
Justice of the Peace.

B.

Statement.

Value of the cargo shipped at Kingston (Ja.) 30,000, which covered at the premium paid Md. Ins. Co.:

Say 18 p. ct. and 2½	$37,736	
Samuel Smith's proportion, 7/16	.....	$16,509 50
S. Smith & Buchanan, 7/16	.....	16,509 50
		$33,019 00
Deduct therefrom total am't insured for their amount...		13,845 00
		19,173 50
93 Value of said ship Jane $8,000, which covered at 12½ p. ct. and 2½ p. ct., as usual	$9,411 76	
Their one-half	.....	4,705 88
Value of freight round say, on 2,400 bar'ls $3. $7,200 which covered at 12½ p. ct. and 2½ p. ct. as usual	8,470 18	
From which deduct one-third, per decision of com'rs	2,823 52	
	5,647 06	
Of which S. Smith's and Buchanan's proportion say one-half (½) is		2,823 53
Total amount of claim being		26,702 91

C.

DISTRICT OF COLUMBIA, } *sct*:
Washington County, }

On this twenty-first day of February, 1823, personally appeared before me, a justice for the peace in and for the county of Washington, Samuel Smith of the city of Baltimore and State of Maryland, and made oath on the Holy Evangely of Almighty God that the facts and circumstances stated in the foregoing memorial, as far as they come under his knowledge are just and true, and that those stated as the knowledge of others he believes to be true; and that about the (M. S. mutilated) of the commissioners the above-recited claim was brought to (M. S. mutilated) he informed the aforementioned Thomas Ellicott and Jonathan Meredith.

(M. S. mutilated.)

Agreement of Counsel as to Certain Evidence.

(Filed with depositions.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL. }
vs.
WILSON C. BUCHANAN ET AL. }

It is agreed between counsel of record in the above-entitled cause that in lieu of the production of the original papers and proceedings in the two causes of Esther S. Buchanan, administratrix of William B. Buchanan, deceased, *vs.* The United States, lately pending in the Court of Claims of the United States, and known as French spoliation claims cases No. 381 arising out of the capture of the ship Jane, John Wallace, master, and No. 2011 arising out of the capture of the ship Pataps-o, William Hill, master, or certified copies of such papers and proceedings, the printed copies of the conclusions of fact and of law found by said Court of Claims in said cases, as they appear in a bound volume of the conclusions and findings of said court, the property of Frank P. Clark, Esq., shall be read and used in evidence in this case, as though certified
94 copies of the same were filed herein. It is agreed that said volume shall not be filed among the proceedings herein but that it shall remain in the possession of Mr. Clark subject to the reasonable use of counsel.

TAYLOR & KEECH,
Solicitors for Complainant.

FRANK P. CLARK,
Solicitor for J. Louis Smith, J. Louis Smith, Adm. d. b. n., c. t. a., of Samuel Smith; Mary Coles Carter, Sally Carter, Robert Smith Carter, Cary Ann Fink, Rudolph Fink, Her Husband; Kate Prather Nicholas, Sarah Nicholas.

A. W. MACHEN,
A. W. MACHEN, JR.,
Sol'r- for Laura Patterson.
SIDNEY T. DYER AND
ELISHA DYER, JR., *Def'ts.*

Two Agreements with Reference to Certain Exhibits Filed by Complainants and Known as No. 1, 2, 3, and 4, and Filed by Defendants and Known as No. A. A., B. B., C. C., D. D.

(Filed with depositions.)

In the Circuit Court No. 2 of Baltimore City.

BUCHANAN ET AL.
vs.
BUCHANAN ET AL.

It is mutually agreed between the parties to this cause, that the following instruments and papers offered in evidence by Esther S. Buchanan, administratrix of William B. Buchanan, deceased, complainant in the above-entitled action, which have been heretofore offered in evidence in this case and shown as Complainants' Exhibits No. 1, 2, 3 and 4, may be read in evidence at the hearing and in any appellate court, in case of an appeal, with the same effect as if the original record, and all the papers and proceedings or duly certified copies thereof in the two cases of Esther S. Buchanan administratrix of William B. Buchanan, deceased, *vs.* The United States late pending in the Court of Claims of the United States, and known as "French spoliation claims cases No. 381" (arising out of the capture of the ship "Jane" John Wallace, master,) and No. 2011 (arising out of the capture of the ship "Patapsco" William Hill master,) were produced and filed in evidence in this case, and all other facts and circumstances legally requisite for the proof and authentiatication of such records proceedings, papers, or copies, as evidence in this case, has been fully proven, it being expressly understood, however, that the parties to this cause and any of them other than said Esther S. Buchanan, administratrix, etc., shall have full right to make any legal or equitable objection and exception to the relevancy or competency of the same as evidence in this cause that might have been made, had duly certified copies of the whole records and all the papers and proceedings in said *said* causes been produced and filed in these proceedings and none other, that is to say:

95 In case No. 381 (*a*) a printed copy of the petition of Esther S. Buchanan, administratrix, filed in said case, heretofore filed with the examiner and marked "Complainants' Exhibit No. 1" and (*b*) certified copies of certain depositions given by Esther S. Buchanan and Robert Carter Smith in the course of said proceeding, heretofore filed with the examiners and marked "Complainants' Exhibits No. 203."

In case No. 2011 a printed copy of the petition of Esther S. Buch-

anan, administratrix etc., filed in said case heretofore filed with the examiner and mark- "Complainants' Exhibit No. 4."

TAYLOR & KEECH,
For Complainants.

FRANK P. CLARK,
For J. Louis Smith and Sundry Other Defendants.

ARTHUR W. MACHEN,
ARTHUR W. MACHEN, JR.,
Sol'rs for Laura Patterson, Sidney T. Dyer, and Elisha Dyer, Jr., Her Husband.

D. K. ESTE FISHER,
Sol. for Mr. and Mrs. Wainawright.

HERBERT B. STIMPSON,
Solicitor for Wilson Cary Buchanan.

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON C. BUCHANAN ET AL.

It is mutually agreed between the parties to this cause that the following-described instruments and papers offered in evidence by Louis Smith, administrator *d. b. n. c. t. a.*, of Samuel Smith, Louis Smith, Sally Carter, Mary Coles Carter, Robert Smith Carter, Carry Ann Fink and Rudolph Fink, her husband, Kate Prather Nicholas, Sarah Nicholas, Laura Patterson, Sidney T. Dyer and Elisha Dyer Jr., her husband, defendants, and shown in Exhibits A. A. B. B. C. C. D. D. hereto annexed, may be read in evidence at the hearing, and in any appellate court, in case of appeal, with the same effect as if the originals had been produced and filed, and the making and execution thereof, and all other facts and circumstances legally requisite for the proof and authentication thereof as evidence in this cause has been fully proved; it being expressly understood, however, that the parties to this cause or any of them, other than the parties now offering said instruments in evidence, shall have full right to make any legal or equitable objection and exception to the relevancy or competancy of the instruments, or any of them, as evidence in this cause, aside from the mode of proof or authentication thereof.

96 Exhibit A A. Register of the ship "Jane," registered at the port of Baltimore on June 16th, 1797, in pursuance of an act of Congress of the United States entitled "An act concerning the registering and recording of ships or vessels."

Exhibit B B. Register of the ship "Patapsco" registered, at the port of Baltimore on June 21st, 1797 in pursuance of the act of Congress last above mentioned.

Exhibit C C. Deed of trust from Samuel Smith, James A. Buchanan and William B. Buchanan, copartners, trading under the firm — of S. Smith & Buchanan to Thomas Ellicott and Jonathan Meredith, execu-ed on the ninth day of November, 1820, and re-

corded in the land records of Baltimore county (now city) in Liber W. G. No. 157 folio 351 etc.

Exhibit D D. Memorial of Thomas Ellicott and Jonathan Meredith trustees of Samuel Smith and others, addressed and presented to the honorable the commissioners appointed under the 11th article of the treaty of amity, settlements and limits between the United States and His Catholic Majesty concluded at Washington on the 22nd February 1819.

Affidavit of Samuel Smith to said memorial made in the District of Columbia on the twenty-first day of February, 1823.

It is further agreed that each and all of the aforesaid instruments were filed and used in evidence in the cause of Esther S. Buchanan, administratrix of William B. Buchanan *vs.* The United States, late pending in the Court of Claims of the United States, and known as French spoliation claims cases Nos. 381 and 2011, and that the said Exhibit- A A. and B B. were produced and offered in evidence in said causes by the said petitioner Esther S. Buchanan administratrix etc.

TAYLOR & KEECH,
For Complainants.
FRANK P. CLARK,
For J. Louis Smith and Sundry Other Defendants.
ARTHUR W. MACHEN,
ARTHUR W. MACHEN, Jr.,
Solicitor- for Laura Patterson, Sidney T. Dyer and Elisha T. Dyer, Jr., Her Husband.
D. K. ESTE FISHER,
Sol. for Mr. and Mrs. Wainwright.

HERBERT B. STIMPSON,
For Wilson Cary Buchanan.

NOTE.—The following are the findings of the Court of Claims in the two cases of Esther S. Buchanan administratrix *vs.* The United States—copied from "Opinions of Court of Claims, Reports of Court to Congress" "French spoliations" and embodied in this record under agreement of counsel filed in this cause.

97 *Conclusions of Facts in Case* 2011, *etc.*

These cases were tried before the Court of Claims. The claimants were represented by William E. Earle, Esq. (with whom upon the brief were Messrs. Shellaberge- & Wilson), and Leonard Myers, Esq. (with whom upon the brief were Messrs. Lawrence Lewis Jr., Dallas Sanders, and J. Bayard Henry, Esqrs.), and The United States, defendants, by the Attorney General through his assistant in the Department of Justice, Benjamin Wilson, Esq., with whom was Assistant Attorney General Rob. A. Howard.

The court upon the evidence and after hearing the arguments and considering the same with the briefs of counsel on each side, determine the facts to be as follows:

I.

The ship Patapsco was a registered vessel of the United States of 230$\frac{7}{95}$ tons burthen built in the year 1796. She was owned by John Donnell, James A. Buchanan, and Samuel Smith (each owning one-third), residents of Baltimore and citizens of the United States and early in November 1798 under the command of Joshua W. Hill she sailed upon a commercial voyage from Baltimore bound to London with a cargo of coffee, cotton, sugar, and cochineal, together with one case of mathematical instruments, owned as hereinafter set forth.

II.

While pursuing her voyage the Patapsco was captured by two French privateers the Escamateur and the Furet. She was carried to Dieppe, and there condemned by the French tribunal and sold as prize, whereby she and her cargo became a total loss. Said vessel was worth the sum of $10,150, and two-thirds the freight was the sum of $3,680.

III.

The grounds of condemnation were:

1. That the crew-list was not in proper form, and as to this the prize tribunal said:

The tribunal considering, first, that the sea letter issued to Captain Joshua William Hill for the ship Patapsco contains all the formalities required in article 25 of the treaty of amity and commerce between France and the United States of America of February 6, 1778, as well as the model annexed to said treaty; that the first column which is in French and which is a literal copy, expressly states that the captain resides at Baltimore; that the signatures of the President of the United States, of the collector and naval officer at Baltimore, as well as the seal affixed to this act, are common in intent and fact to the four columns which compose the whole of this sea letter.

Second. That the difference in the ink and in the writing found in the third column of this role made to contain the places of birth of those composing it can only be considered as an irregularity which renders this act suspicious. Fourth. That the bill of health delivered the sixth November 1798 (o. s.), to the captain by the
98 same public officers who the day previous received the declaration, sworn to by the captain of the number of men composing his crew being different from the role, makes this role still more suspicious, for it bears only the names of fifteen persons, whilst the bill of health states them at twenty. Fifth. That according to the decree of the twenty-sixth October, 1792, a law not abrogated, the dispositions of the officers and sailors of captured vessels can be taken in preference to the bills of lading and other acts making a portion of the papers on board. Sixth. That the role d'equipage of the ship Patapsco, presented by Captain Hill, is not to be taken in preference to the declarations of eight men of his crew and one of the passengers on board, as the irregularities and defects before mentioned make it at least very suspicious.

Seventh. That nothing against these nine individuals had been brought, or any proof of subornation or seduction. Eighth. That therefore no faith can be given to the contents of the role d'equipage of the ship Patapsco, which is null and of no value. Ninth. That all neutral ships, and particularly the American ships which do not have on board a role d'equipage in proper form, should be declared good prizes.

2. That no sufficient certificate of cargo was found on board, and as to this the prize tribunal said.

That all merchandise shipped under the American flag not sufficiently proved neutral ought to be confiscated. Eleventh. That according to article 25 of the treaty of amity and commerce between France and the United States of America of the sixth February, 1778, expressly states the obligation of captains of ships to be furnished with certificates issued in the usual form by the officers of the places from which the vessels have sailed, and to exhibit them. Twelfth. That this essential paper according to the treaty, is not found on board the Patapsco, and that the captain did not show it.

3. Because of the mathematical instruments found on board, as to which the prize tribunal said:

That the compasses contained in the case found on board of this ship bear on the greater part of the same the England manufacture by this superscription: Made by Thomas Bradford of London. And according to the law of twenty-ninth Nevose, sixth year, all vessels found at sea loaded entirely or in part with merchandise coming from England shall be declared good prizes; that even the condition of ships, as regards their neutral or enemy's character, shall be determined by their cargoes.

It appears that the ship had on board and there were before the prize tribunal a passport, register sea letter, clearance, manifest of cargo, bills of lading and invoices, which were criticised as above set forth by the prize tribunal.

IV.

John Donnell and the firm of S. Smith & Buchanan owned jointly 41 bales of cotton shipped on said Patapsco. John Donnell was a citizen of the United States. Samuel Smith, James A. Buchanan, and William B. Buchanan, citizens of the United States, formed the said firm of S. Smith & Buchanan. The said cotton was worth the sum of $4,100, of which said Donnell and said firm each owned half.

99 V.

The said firm of S. Smith & Buchanan and John Smith, Jr., a citizen of the United States, owned jointly, one-half by said firm and one-half by said John Smith, Jr., 70 hogsheads and 1,233 sacks of coffee shipped on said Patapsco. Said coffee was worth the sum of $46,012.

VI.

Robert Gilmor & Co. owned 28 packages of cochineal shipped on said Patapsco, and said Robert Gilmor & Co., it is admitted in argu-

ment, have been reimbursed by insurers for their loss thereon, as hereinafter shown.

VII.

John Hollins, a citizen of the United States owned 100 boxes of white Havana sugar shipped on said *shipped on said* Patapsco, which were worth $7,600.

VIII.

John Smith, Junior, hereinbefore mentioned, also owned 335 cases of Havana sugar, shipped on said Patapsco worth $25,460.

IX.

John Stewart was appointed January 23, 1886, by the circuit court of Baltimore, Md., as receiver of the Maryland Insurance Company. Robert Gilmor & Co., citizens of the United States shipped on said Patapsco 28 packages of cochineal and caused insurance to be effected thereon for the voyage aforesaid in the office of the Maryland Insurance Company in the sum of $28,000, the value thereof which said sum said company thereafter paid to the assured, in consideration whereof the latter by an instrument in writing dated in the month of May 1800, and acknowledged upon the tenth day of said month and year, "bargained, sold, assigned transferred, ceded, abandoned, and set over" to said company the insured property, and all rights to have, to hold recover, receive, and take the same, and said assured further constituted said company their attorney, to recover and receive for the use of said company the said insured property and all moneys thence arising, and "all damages of and concerning the same from all and every king, prince, potentate, State, republic persons and person whomsoever."

X.

November 9, 1820, said Samuel Smith, James A. Buchanan and William B. Buchanan copartners, and trading as hereinfore set forth as copartners under the firm name of S. Smith and Buchanan assigned in trust to Thomas Elliott and Jonathan Meredith as trustees all their real and personal estate belonging to them in the said copartnership capacity of S. Smith and Buchanan. This assignment was made for the benefit of creditors and for the nominal consideration of $5. The purposes of this trust have been satisfied as appears by evidence taken since the findings were filed in the case of the ship Jane.

Said claims were not embraced in the convention between the United States and the Republic of France concluded on the 30th of April 1803. They were not claims growing out of the
100 acts of France allowed and paid in whole or in part under the provisions of the treaty between the United States and Spain concluded on the 22nd of February, 1819, and were not allowed in whole or in part under the provisions of the treaty between the United States and France of the fourth of July, 1831.

The claimants in their representatives capacities are the owners of said claims, which have never been assigned except as aforesaid.

Conclusions of Law.

The court decides as conclusions of law that said seizure and condemnation were illegal and the owners and insurers had valid claims of indemnity therefor upon the French government prior to the ratification of the convention between the United States and the French Republic concluded on the 30th day of September, 1800; that said claims were relinquished to France by the Government of the United States by said treaty in part consideration of the relinquishment of certain national claims of France against the United States, and that the claimants are entitled to the following sums from the United States.

William Donnell, administrator *de bonis non cum testamento annexo* of the estate of John Donnell, deceased, to the sum of	$6,659 99
George W. Brown administrator of the estate of James Buchanan deceased to the sum of	4,609 99
(Being his share of vessel and freight.)	
Robert Carter, administrator *de bonis non cum testamento annexo* of the estate of Samuel Smith deceased to the sum of	4,609 99
(Being his share of vessel and freight.)	
Esther S. Buchanan, administratrix of the estate of William Buchanan who was the surviving partner of the firm of S. Smith and Buchanan deceased, to the sum of	25,056 00
(The value of the cargo by said firm.)	
Cumberland D. Hollins, administrator *de bonis non cum testamento annexo* of the estate of John Hollins deceased to the sum of	7,600 00
Mary Ann B. Smith, as administrator *de bonis non cum testamento annexo* of the estate of John Smith Jr., deceased to the sum of	48,466 00
John Stewart, as receiver of the Maryland Insurance Company, to the sum of	28,000 00

Filed April 22, 1889.

BY THE COURT.

Conclusion of Facts in Case 381, *etc.*

These cases were tried before the Court of Claims on the 18th May 1887.

These claimants were represented by William E. Earle, Esq., and The United States, the defendants, by the Attorney General through his assistant in the Department of Justice, Benjamin Wilson Esq., with whom was Assistant Attorney General Rob. A. Howard.

101 The court, upon the evidence, and after hearing the arguments and considering same with the briefs of counsel on each side, determine the facts to be as follows.

General Findings Relating to the Ship and Cargo.

I.

The ship Jane, of Baltimore, sailed from Jamaica for that port on the 20th July 1798, in company and under convoy of the British frigate Roebuck. They kept company with the convoy until the sixth day, when a strong current set to leeward. On the 25th the ship bore away and proceeded on her voyage un il the 29th of the same month, when, being westward of the Grand Cayennes, she was boarded by the French privateer La Pabo, which took out the captain and five men and by the prize crew to Havana, whether the master of the ship was subsequently brought by the privateer. He applied to the Spanish government, but could not get the ship restored. She was then taken to Cape Francois where she was condemned by the tribunal of commerce. The ground- of condemnation were that the Jane had sailed from Kingston, an English port, laden with rum and sugar, the produce of English possessions which was contrary to the provisions of certain French decrees. Another ground of condemnation was that — nothing on the ship which proved his naturalization, contrary to the French decree respecting the navigation of neutral vessels in time of war. No other ground of condemnation was alleged.

II.

The Jane was a duly registered vessel, measuring 214 tons, built at Baltimore in the year 1790, and owned by John Hollis of Baltimore, one-half, and by Samuel Smith and James A. Buchanan, of Baltimore, one-half as appears by the register June 15, 1797. John Smith is named in the register as master, but John Wallace was master at the time of capture, and the copy of the register, carried by the vessel on which his name as master may have been indorsed was detained by the captors and cannot be produced.

III.

The cargo consisted of merchandise belonging to the firm of S. Smith & Buchanan, and to Samuel Smith individually, and one Edmund Suise, Samuel Smith and Smith & Buchanan were merchants doing business in Baltimore Edmund Suise does not appear in these proceedings.

IV.

The value of the ship was	$6,420 00
The value of Samuel Smith's portion of the cargo, seven-sixteenths	13,710 34
The value of Smith & Buchanan's portion of the cargo, seven-sixteenths	13,710 34
The value of Edmund Suise's portion of the cargo, two-sixteenths	3,917 22
The freight earnings of the vessel for the voyage	3,424 00
Premium of insurance paid on cargo	3,600 00
Amounting in all to	44,781 90

V.

In case No. 381.—The firm of S. Smith & Buchanan were the owners of one-half of the vessel and of seven-sixteenths of the cargo.

They had procured insurance for themselves and the other owners of the cargo to the amount of $20,000 upon the cargo. For this insurance the firm of Smith & Buchanan paid as their proportion of the premium $1,560, and subsequently, received from the insurers $8,532.13.

The los-es of Smith & Buchanan by reason of the capture of the Jane and her cargo, for which they are entitled to endemnity, are as follows:

One-half of the ship	$3,210 00
Seven-sixteenths of the cargo	13,710 34
One-half of the freight earnings of the vessel	1,712 00
Premium paid for insurance	1,560 00
Amounting in all to	20,192 34
Less received for insurance	8,532 13
Leaving amount of losses	11,660 22

VI.

In case No. 1003 Samuel Smith was the owner of seven-sixteenths of the cargo.

He had procured insurance through the firm of Smith & Buchanan, as set forth in the preceding finding, and had paid as his proportion of the premium of $1,560. He subsequently received from the insurers $8,532.13.

The losses of Samuel Smith by reason of the capture of the cargo of the Jane for which he was individually entitled to indemnity, are as follows:

Seven-sixteenths of the cargo	$13,710 34
Premium paid for insurance	1,560 00
Amounting in all to	15,270 34
Less received for insurance	8,532 13
Leaving amount of losses	6,738 21

VII.

In case No. 770. John Hollins was the owner of one-half of the vessel.

The losses of John Hollins by reason of the capture of the Jane, for which he was entitled to indemnity, are as follows:

One-half of the ship	3,210 00
One-half of the freight earnings of the vessel	1,712 00
Amounting in all to	4,922 00

VIII.

In case No. 996. The Maryland Insurance Company was in 1797 a corporation duly organized under the laws of the State
103 of Maryland authorized to carry on the business of marine insurance. On the 20th December, 1794, it issued a policy of insurance to the firm of S. Smith & Buchanan, for themselves and other owners of the cargo of the Jane, for a voyage from Baltimore to Hispaniola and other ports and return. Upon this policy the company subsequently paid to the owners of the cargo for the capture of the Jane, as set forth in finding I, the sum of $19,502 and the owners abandoned the cargo to the insurers as a total loss.

The losses of the Maryland Insurance Company by reason of the capture of the Jane and her cargo amounted to $19,502.

IX.

In case No. 996 the claimant, John Stuart, on the 23rd day of January, 1886, was appointed by the circuit court of Baltimore, Md., receiver of the Maryland Insurance Company, with authority to collect the outstanding debts due to the company and especially the claims against the United States commonly known and described as the French spoliation claims. It does not appear whether the persons for whose benefit the said Stewart was appointed receiver were the stockholders of the company and their personal representatives or the creditors of the company and their personal representatives.

X.

November 9, 1820, said Samuel Smith, James A. Buchanan, and William B. Buchanan, copartners, and trading as hereinbefore set forth as copartners under the firm name of S. Smith & Buchanan, assigned in trust to Thomas Ellicott and Jonathan Meredith, as trustees, all their real and personal estate belonging to them in the said copartnership capacity of S. Smith & Buchanan. This assignment was made for the benefit of creditors and for the nominal consideration of $5 the purposes of this trust have been satisfied.

XI.

In case No. 381 William B. Buchanan was the surviving partner of the firm of S. Smith & Buchanan. The claimant Esther S. Buchanan has produced letters of administration for the estate of William B. Buchanan, deceased, and has otherwise proved to the satisfaction of the court that the person of whose estate she is administratrix was the same person who was an owner of the Jane and her cargo in 1798 and a citizen of the United States.

XII.

In case No. 1003, the claimant Robert Carter Smith has produced letters of administration for the estate of Samuel Smith, deceased, and has otherwise proved to the satisfaction of the court that Samuel Smith of whose estate he is administrator, was the same person who

was an owner of the Jane and her cargo in 1798 and a citizen of the United States.

XIII.

In case No. 770 the claimant Cumberland D. Hollins has produced letters of administration for the estate of John Hollins, deceased and has otherwise proved to the satisfaction of the court that the person of whose estate he is administrator was the same
104 person who was an owner of the Jane in 1798, and a citizen of the United States.

XiV.

Said claims were not embraced in the convention between the United States and the Republic of France concluded on the 30th of April 1803, and were not claims growing out of the acts of France, allowed and paid in whole *on* in part under the provisions of the treaty between the United States and Spain, concluded on the 22nd of February, 1819, and were not allowed in whole or in part under the provisions of the treaty between the United States and France of the 4th of July 1831.

The claimants in their respective capacity are the owners of said claim, which has never been assigned except as aforesaid.

Conclusion of Law.

The court decides as conclusions of law that said seizure and condemnation were illegal, and the owners and insurers had valid claims of indemnity therefor upon the French government prior to the ratification of the convention between the United States and the French Republic concluded on the 30th day of September, 1800; that said claims were relinquished to France by the Government of the United States by said treaty in part consideration of the relinquishment of certain national claims of France against the United States; and that the claimants are entitled to the following sums from the United States:

Esther S. Buchanan administratrix, representing Smith & Buchanan	$11,660 21
Robert Carter Smith, administrator, representing Samuel Smith	6,738 21
Cumberland D. Hollins, administrator, representing John Hollins	4,922 00
John Stewart, receiver of the Maryland Insurance Company	19,502 00
	$42,822 42

Filed December 7, 1891.

BY THE COURT.

Depositions of James A. Buchanan in the Baltimore county court (removed to court of common pleas of Baltimore city), *in re* James A. Buchanan, an insolvent debtor, viz., interrogatories numbers one, three, seventeen, nineteen, thirty-one, and forty-one, with the answers thereto and the appended certificate of the justice of the peace, and the paper marked "A," entitled "Statement of the affairs of S. Smith & Buchanan." (Interrogatories filed on 18th May, 1821, and answers thereto, &c., on 18th June, 1821.)

(Embodied in this record under agreement of counsel.)

Interrogatories to be propounded to James A. Buchanan, an insolvent debtor, on the part of the Bank of the United States and the Union Bank of Maryland, creditors of the firm of S. Smith & Buchanan, of the city of Baltimore.

Interrog. I. At what time did the firm of Smith and Buchanan become insolvent, and how long before their suspension of payment did they ascertain that they should be obliged to submit to it?

105 1st answer. Smith and Buchanan suspended their payments in the month of May 1819. Previously to that month, they had not "ascertained," nor did it occur to them, that they would be obliged to stop payment.

Interrog. III. To what amount were they deficient in their means to pay their debts at the time of their failure and what was the amount of their debts?

3rd answer. Soon after the suspension of payment by S. Smith & Buchanan, a statement was prepared, exhibiting the debts of the house, including of the debt of the United States bank, at $640,000, and its means exclusively of its claims on Holland France and Naples, at $723,850. A copy of this statement was presented to the Bank of the United States, and another copy marked A. is presented herewith.

"A."

Statement of the Affairs of S. Smith & Buchanan, Debts due by S. Smith & Buchanan.

Bills payable notes to trustees			
	Geo. P. Stevenson.....	23,476	
	James Hindman.....	6,803	
	Hollins & McBlair.....	3,804	
	P. Tessier.....	4,755	38,838
Due James Bosley.....		.....	28,196
D. Winchester.....		.....	5,412
Honqua		.....	11,827
Palmer & Co.....		.....	4,033
Andrew Crawford.....		.....	671
Custom-house.....		.....	20,000
Premiums of insurance.....		.....	13,000
James Scott & Co.....		.....	30,000
A. De Frias & Co.....		.....	30,000

Our proportion bills p. Brazilian from Calcutta	.....	20,090
Thomas Pany	.....	5,044
H. T. Tampayo	.....	1,989
Office discount & deposit	*35,000	
B. U. S. secured by endorsers	240,000	
⅓ excess on stock notes	90,000	
Discount at office on notes Calhoun & Matthews	42,000	
Discounts at office on notes Lemuel Taylor.	15,000	422,000
There may be other debts to amount of, say	.....	8,900
		$640,000

106 We are endorsers or signers for Hollins & McBlair $56,750, for Lemuel Taylor $15,000, for Calhoun & Matthews $31,228.50 for James Purviance $9,000, and there may be other endorsements to an inconsiderable amount. We are assurred that the several parties will prevent recourse being had to us.

We cannot estimate the result of our engagements with the bank and others for loans on hypothicated stocks. These loans are unknown to the bank and it is hoped they will be met by the stock. If there be a gain thereon it will of course be an augamentation of our means.

Debts and Property Belonging to S. Smith & Buchanan.

Ship Sidney Hugo	5,000	
Wabash & do	7,000	
Exchange & do. after paying bill to B. W. I.	10,000	
Unicorn & do	10,000	
Brig Homer & cargo	40,000	180,000
Ship General Smith	.....	5,000
Brig Ariadne	.....	2,000
Warren Manufactory	.....	37,00
Exchange stock	.....	6000
Improving Company	.....	500
Union Manufactory	.....	1350
Fire Insurance Company	.....	1000
Smith Calhoun & Co	.....	10,000
T. A. Buchanan & Co	.....	20,000
Ship Warren under Spanish treaty	.....	50,000
Goods on hand	.....	10,000
Hollins & McBlair	.....	30,000

* The banks state this balance at $76,310 but we understand they charge therein $25,000 which belongs to and will be secured by F. W. McCulloh, $11,000 for interest which belongs to and is included in our estimate of balance due stocks notes and 5,000 a check on New York for which 50 shares B. W. F. stock are deposited, and we are entitled to a credit for dividend not contained the probable amount about $6,000.

Estate William Wyse	.....	3500
Funds in Pernambuco	.....	4000
Lands in North Carolina	.....	2000
Lemuel Taylor	.....	18.000
½ surplus Gen'l Smith's cargo to Rotterdam	.....	5.000
T. L. L. Brent	.....	3000
F. W. Bronough	.....	500
A shipment to Leghorn	.....	15000
Real estate	.....	250.000
Other real estate & personal estate	.....	70.000
		723850

Claims on the French, the Dutch and the Neapolitan Governments.

Claim on Lima for ship clothier.

Interrog. XVII. Have you surrendered and delivered up to your provisional trustee all your books, books of account, and papers, property, estate and effects, bonds, notes, and evidences of debt? If you have not in whose hands or possession are they, and why have they not been so delivered up? Have you in your possession, or under your control, any property real personal or *mixt*, of any nature or description, the necessary wearing apparal and beddery of yourself and family excepted?

17th answer. Previously to my application for the benefit of the insolvent law, I in the month of November, 1820, as one of
107 the firm of S. Smith & Buchanan united in a transfer of all their effects to trustees one of whom, namely Thomas Ellicott Esqr. was named by the Bank of the United States and delivered to them the working books of the house. There is a large mass of other books, which I consider unimportant but which have been held at the disposition of the trustees. I have not in my possession, or under my control, any property, real personal or mixed, of any nature or description, wearing apparal and some trifling counting-house furniture excepted belonging to myself or to S. Smith & Buchanan, or to my creditors. I have not since the failure of S. Smith & Buchanan, drawn upon the funds for my maintenance, except in the trifling sum which will be stated in my 31st answer, but have supported myself and my family from the means of my children which are amply sufficient for the purpose.

Interrog. XIX. What was the situation of the commercial house of S. Smith & Buchanan at the commencement of the year 1818? Was it solvent? Do the books of that firm exhibit a fair and correct statement of their situation at that period? If solvent, how much did you estimate the house to be worth?

19th answer. At the commencement of the year 1818, the house of S. Smith & Buchanan was unquestionably solvent, and a conclusive evidence that such was my sincere undissembled belief, is to be found in this fact, viz:—that my son William, who enjoyed a competent independant estate of his own, was, on the first day of

that year, taken into the house of S. Smith & Buchanan as a partner. The books of the house of S. Smith & Buchanan, give as fair and correct a statement of their affairs at that period, as could well be given, where the concerns were so various and extensive. I do not recollect to have them estimated, and I cannot now estimate what the house was then worth.

Interrog. XXXI. Do the books of S. Smith & Buchanan exhibit a fair full and complete account of the business of the said firm since the first day of May 1819? Are all the payments made by, and disbursements of every kind made by them, and monies received by them, or any of them, and losses sustained by them, regularly entered in the said books? If they are not. Exhibit a statement of all monies and property of every kind received by you on behalf of the said firm, or which have come into your hands since the said period, and which have not been entered upon the books, and state what transfers of property or payments of money have been made, and to whom and which, since that period, and which do not appear on the books.

31st answer. I believe that the books of S. Smith and Buchanan, exhibited as fair, full and complete an account of the business of the said firm, since the first of May, 1819, as the deranged state of their affairs would permit. I recollect no payments which do not appear on said books, unless it be, some trifling sums, less altogether than $1000, unexpectedly recovered, on accounts which had been closed, and which sums, were used for family expenses, in equal portions, by my senior partner and myself.

108 Interrog. XL. At the time of the failure of James Calhoun what was the nature of your mutual relations as debtor and creditor? Was he indebted to you or you to him and if either to what amount, and how were such debts provided for by him or you? Were you responsible on any of his paper, if yea state particularly to what amount, and did you or did you not consent to hold yourself liable and to discharge him upon making any settlement from his father's estate upon yourself or your family, were such settlements ever made upon your family, and if so, have you ever paid the creditors of James Calhoun upon such responsibilities or obligations?

40th answer. At the time of the failure of James Calhoun Jun'r there were no pecuniary relations between him and me, as debtor and creditor, except as already stated, in our partnership connexion. I was not otherwise responsible upon any of his paper, nor he upon any of mine. He made no settlement of any kind upon me or my family. I have made therefore payments to his creditors, upon such responsibilities or obligations.

BALTIMORE COUNTY, *sct:*

On the 18th June, 1821 personally appeared James A. Buchanan before the subscriber a justice of the peace in and for the county aforesaid who made oath on the Holy Evangely of Almighty God

that the above answers are correct and true to the best of his knowledge and belief.

Sworn before

WM. M. MEDCALF, *J. P.*

Exceptions to Testimony.

(Filed 21st June, 1900.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON C. BUCHANAN ET AL.

To the honorable the judge of said court:

The complainant, Esther S. Buchanan, administratrix etc. by Taylor and Keech her solicitors, object, and except to the admission in evidence of the following testimony and documents herein named, offered in evidence by the defendants J. Louis Smith and others, for the reasons hereinafter set forth.

Third. They object to the admission in evidence of the following documents and papers, and to the effect thereof.

1. Defendants' Exhibit A A. (being a copy of the register of the ship Jane)

2. Defendants' Exhibit B B. (being a copy of the register of the ship Patapsco).

3. Defendants' Exhibit D D. (being a copy of a certain memorial etc.)

4. The papers and proceedings in a proceeding late pend-
109 ing in the Baltimore county court etc. entitled "*In re* James A. Buchanan an insolvent debtor" etc. in so far as the same or any one or more of them may be taken or attempted to be taken to contradict or vary the terms conditions force and effect of the proceedings, findings and acts by virtue of and as a consequence of which the fund of money in this case for distribution was paid to the complainant as administratrix of William B. Buchanan, deceased, and the legal effect of said payment or in so far as the same may be taken or attempted to be taken to show that the partners in said firm of S. Smith and Buchanan were other than Samuel Smith, James A. Buchanan and William B. Buchanan all now deceased, and that William B. Buchanan was surviving partner of said firm.

1. Because it is not competent in this proceeding to seek to contradict or vary the force, effect, terms and conditions of the proceedings, findings and acts upon by and as a consequence of which the fund in this proceeding for distribution was paid to said complain-t as administratrix of William B. Buchanan, deceased.

2. Because the offer of said documents and proceedings constitutes an attempt to so vary or collaterally impeach such proceedings, finding- and acts.

3. Because by said proceeding-, findings and acts said award was made to this complainant as administratrix of William B. Buchanan, deceased, on behalf of a firm of S. Smith and Buchanan of which the members were S. Smith, James A. Buchanan, and William B. Buchanan *were members* of whom William B. Buchanan was the survivor.

4. Because the same are in contradiction of the other evidence offered in this case on behalf of said defendants.

5. For other reasons to be shown at the hearing etc.

TAYLOR & KEECH,
For Complainants.

General Replication.

(Filed 28th June, 1900.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON C. BUCHANAN ET AL.

To the Honorable Henry Stockbridge, judge of said court:

The p-aintiff joins issue on the matters alleged in the amended answers of J. Louis Smith *et al.* and of Laura Patterson *et al.* so far as the same may be taken to deny or avoid the allegations of the bill.

TAYLOR & KEECH,
Solicitors for Plaintiff.

110 *Order of Court on Exceptions.*

(Filed 28th June, 1900.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILLIAM C. BUCHANAN ET AL.

In the matter of the exceptions of the complainant- to certain evidence offered by the defendant, J. Louis Smith and others,

The court deems it unnecessary to rule on complainant-' first exception, for the reason that the offer of the letter referred to therein has been withdrawn by said defendant.

The court sustains the complainants' second exception to the admissibility of a certain statement of the witness J. Louis Smith referred to in said second exception.

And the court hereby overrules the complainants' third exception as to the admissibility in evidence of certain documents referred to in said exception.

HENRY STOCKBRIDGE.

Decree.

(Filed 28th June, 1900.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON C. BUCHANAN ET AL.

Decree.

The above-entitled cause coming on for a hearing, and the same having been fully argued by counsel and considered by the court:

It is thereupon this 28th day of June, 1900 ordered adjudged and decreed by the circuit court No. 2 of Baltimore city that the fund in the hands of Esther S. Buchanan, administratrix of William B. Buchanan, deceased, complainant, in this proceedings, be divided into three equal parts, and that one of said three equal parts of said fund be distributed among the next of kin of each of the partners of the firm of S. Smith & Buchanan, to wit, Samuel Smith, deceased, James A. Buchanan, deceased, and William B. Buchanan, deceased, in being on the third day of March 1899, *per stirpes*, and not *per capita*, treating the said Samuel Smith James A. Buchanan and William B. Buchanan, respectively, as the originai *stirp-s*, according to the laws of the State of Maryland and the statutes of this State in such cases made and provided.

And it is further ordered adjudged and decreed that the costs of this proceeding be paid out of the fund in the hands of the complainant, now brought into court for distribution.

111 And it is further ordered adjudged and decreed that the papers in this cause be referred to one of the auditors of this court for the statement of an account in the premises, in accordance with the terms of this decree.

HENRY STOCKBRIDGE.

Order for Appeal of Laura Patterson et al.

(Filed 13th July, 1900.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON C. BUCHANAN ET AL.

To the clerk of the circuit court number two of Baltimore city:

Laura Patterson, Sidney T. Dyer and Elisha Dyer Jr. her husband, defendants in this cause, pray an appeal to the court of ap-

peals from the order or decree passed therein on the 28th day of June 1900.

A. W. MACHEN,
ARTHUR W. MACHEN, JR.,
Sol'rs for Defendants Laura Patterson, Sidney T. Dyer, and Elisha Dyer, Jr.

STATE OF MARYLAND, *Baltimore City,* } *To wit:*

I hereby certify that on this 13th day of July, 1900, personally appeared before the subscriber a justice of the peace of Baltimore city, Arthur W. Machen, Jr., and made oath in due form of law that the above appeal is not taken for delay.

WILLIAM R. LLEWELLYN, *J. P.*

Order for an Appeal of J. Louis Smith et al., Defendants.

(Filed 13th July, 1900.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON C. BUCHANAN ET AL.

Mr. Clerk:

Please enter an appeal in this case from the decree of the twenty-eighth of June, 1900, for the following defendants: J. Louis Smith, Mary Coles Carter, Sally Carter, Robert Smith Carter, Cary Ann Fink, and Rudolph Fink, her husband, Kate Prather Nicholas, Sarah Nicholas.

FRANK P. CLARK, *Solicitor.*

STATE OF MARYLAND, *City of Baltimore,* } *ss:*

Personally appeared before me, a justice of the peace of the
112 State of Maryland, in and for the city of Baltimore, Frank P. Clark, solicitor for the appel-ants in this case, who made oath in due form of law, that the appeal is not taken for delay.

Witness my hand, this 13th day of July, 1900.

ANDREW J. COLLARS, *J. P.*

Agreement of Counsel.

(Filed 21st July, 1900.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON C. BUCHANAN ET AL.

It is hereby mutually agreed between the parties to the above-entitled cause that the paper designated as Plaintiffs' Exhibit Exam-

iner No. E, being a printed pamphlet copy of the act of Congress of March 3rd, 1899, entitled "An act for the allowance of certain claims for stores and supplies reported by the Court of Claims under the provisions of the act approved March 3rd, eighteen hundred and eighty-three, and commonly known as the Bowman act, and for other purposes" shall not be copied into the transcript of the record to be transmitted to the court of appeals on the appeals heretofore taken in this cause by certain of the parties defendant, nor shall the same be printed in the court of appeals, but that in lieu of said copying and printing the appellants shall cause to be handed to each of the judges of the court of appeals with the printed record a printed pamphlet copy of said act of Congress, which said pamph-et shall be deemed and taken for all intents and purposes a part of the record in this case and to the same effect as if the same had been transcribed therein except that, as above provided, the same shall not be transcribed or printed, the said — being the same as is printed on pages 1161 to 1214 both inclusive of the United States Statutes at Large vol. 30.

TAYLOR & KEECH,
For Complainant.
FRANK P. CLARK,
Solicitor for Sundry Defendants.
HERBERT B. STIMPSON,
Solicitor for Wilson Cary Buchanan.
D. K. E. FISHER
(W. C. B.),
Sol'r for Mrs. Wainawright.

ARTHUR W. MACHEN,
ARTHUR W. MACHEN, JR.,
Solr's for Laura Patterson and Other-.

Agreement of Counsel as to Record.

(Filed 21st July, 1900.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON C. BUCHANAN ET AL.

113 Mr. Clerk:

In making a transcript of the record in this case to be transmitted to the court of appeals, please omit the following-described papers and parts of papers:

1. Order of appearance for Robert Carter Smith, &c.
2. Order of publication and certificate of publication thereof against non-resident defendants.
3. Order to renew subpœna against Laura Patterson.
4. Petition for leave to take testimony before an examiner and order thereon.
5. Plaintiffs' Exhibit Examiner No. G.

(*Re* Martin estate.)

6. Agreement to take deposition of J. Louis Smith and interrogatories.

7. Commission to Frank M. Eastman to take testimony and the deposition of J. Louis Smith returned thereunder.

8. The letter book of Samuel Smith, offered in evidence by defendants, and afterwards withdrawn.

9. Plaintiffs' first and second exceptions to evidence.

10. Proceedings in the case of *In re* James A. Buchanan's estate in the court of common pleas, except the title of the case &c., and except interrogatories 1, 3, 17, 19, 31 & 40 addressed to James A. Buchanan by the representatives of his creditors and the answers of Jas. A. Buchanan there- and except the appended certificate of the justice of the peace and except the paper marked "A" entitled "Statement of the affairs of S. Smith & Buchanan" all of which matters so excepted shall be transcribed.

11. Plaintiffs' Exhibit Examiner E being a copy of act of Congress entitled "An act for the allowance of certain claims for stores and supplies reported by the Court of Claims under the provisions of the act approved March third eighteen hundred and eighty-three, and commonly known as the Bowman act, and for other purposes," the same being provided for by a separate agreement of counsel filed in this cause.

All other papers and proceedings in the cause should be transcribed in full.

TAYLOR & KEECH,
For Complainant.
FRANK P. CLARK,
Solicitor for Sundry Defendants.
ARTHUR W. MACHEN,
ARTHUR W. MACHEN, JR.,
Solicitors for Laura Patterson and Others.
HERBERT B. SIMPSON,
Sol. Wilson Carey Buchanan.
D. K. E. FISHER,
W. C. B.,
Sol. for Mers. Wainwright.

114 PLAINTIFFS' EXHIBIT EXAMINER No. E, Referred to in Agreement Set Forth on Page Eighty-one.

"(Public—No. 190.)

An act for the allowance of certain claims for stores and supplies reported by the Court of Claims under the provisions of the act approved March third, eighteen hundred and eighty-three, and commonly known as the Bowman act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to

pay, out of any money in the Treasury not otherwise appropriated, to claimants in this act named the several sums appropriated herein, the same being in full for, and the receipt of the same to be taken and accepted in each case as a full and final release and discharge of their respective claims, namely:

Claims allowed under the Bowman and Tucker acts by the Court of Claims.

115 Supplemental Bowman and rent cases.
Miscellaneous Court of Claims findings.

French Spoliation Claims.

To pay the findings of the Court of Claims on the following claims for indemnity for spoliations by the French prior to July thirtieth, eighteen hundred and one, under the act entitled 'An act to provide for the ascertainment of claims of American citizens for spoliations committed by the French prior to the thirty-first day of July, eighteen hundred and one:' Provided, that in all cases where the original sufferers were adjudicated bankrupts the awards
116 shall be made on behalf of the next of kin instead of to assignees in bankruptcy, and the awards in the cases of individual claimants shall not be paid until the Court of Claims shall certify to the Secretary of the Treasury that the personal representatives on whose behalf the award is made represent the next of kin, and the courts which granted the administrations, respectively, shall have certified that the legal representatives have given adequate security for the legal disbursements of the awards, namely:

On the ship Jane, John Wallace, master, namely: Esther S. Buchanan, administratrix, representing Smith and Buchanan, eleven thousand six hundred and sixty dollars and twenty-one cents.

Robert Carter Smith, administrator, representing Samuel
117 Smith, six thousand seven hundred and thirty-eight dollars and twenty-one cents.

Cumberland D. Hollins, administrator, representing John Hollins, four thousand nine hundred and twenty-two dollars.

On the ship, Patapsco William Hill, master, namely: William Donnell, administrator *de bonis non cum testamento annexo* of the estate of John Donnell, deceased, six thousand six hundred and fifty-nine dollars and ninety-nine cents.

George W. Brown, administrator of the estate of James A. Buchanan, deceased, four thousand six hundred and nine dollars and ninety-nine cents, being his share of vessel and freight.

Robert Carter Smith, administrator *de bonis non cum testamento annexo* of the estate of Samuel Smith, deceased, four thousand
118 six hundred and nine dollars and ninety-nine cents, being his share of vessel and freight.

Esther S. Buchanan, administratrix of the estate of William B. Buchanan, who was the surviving partner of the firm of S. Smith and Buchanan, deceased, twenty-five thousand and fifty-six dollars, the value of the cargo shipped by said firm.

Cumberland D. Hollins, administrator *de bonis non cum testamento*

annexo of the estate of John Hollins, deceased, seven thousand six hundred dollars.

Virgillia B. Brooke, administratrix *de bonis non cum testamento annexo* of the estate of John Smith, Junior, deceased, forty-eight thousand four hundred and sixty-six dollars.

Provided, however, that any French spoliation claim appropriated for in this act shall not be paid if held by assignment
119 or owned by any insurance company.

Under contracts of the Navy Department.

Selfridge board findings.

State claims.

Miscellaneous claims.

Piute Indian claims.

For investigation and settlement.

Approved, March 3, 1899."

120 Which said appeal being by the court here also granted, it is thereupon ordered by the court here that a transcript of the record of proceedings in the case aforesaid be transmitted to the court of appeals of Maryland under the agreement of counsel filed in said cause and the same is transmitted accordingly

Test: ALF. J. SCHULZ,
Clerk of the Circuit Court No. 2 of Baltimore City.

In testimony whereof that the foregoing is a full and true transcript of the foregoing papers taken from the record of proceedings in the circuit court No. 2 of Baltimore city in the cause therein mentioned.

I hereto set my hand and affix the seal of the said
(Seal's place.) circuit court No. 2 of Baltimore city on this 30th day of July in the year of our Lord one thousand nine hundred.

Test: ALF. J. SCHULZ,
Clerk of the Circuit Court No. 2 of Baltimore City.

And now at this day, to wit: the second Monday in January being the *the* 14th day of said month in the year of our Lord one thousand nine hundred and one come into the court of appeals here, the parties aforesaid by their attorney- aforesaid.

Whereupon as well the record and proceedings aforesaid, and the judgment given in form aforesaid, being seen, and by the court of appeals here fully understood, and mature deliberation there-
121 upon had, for that it appears to the court of appeals here, that the decree of the circuit court No. 2 of Baltimore city made in this cause on the 28th day of June 1900 be and the same is hereby affirmed in part and reversed in part and the cause remanded for further proceedings, the costs to be paid out of the fund to be distributed.

Note.

The opinion and decree filed in the above-named cause are fully set forth and printed in the record of the case of Esther S. Buch-

anan individually, and as administratrix of William B. Buchanan and Wilson Cary Buchanan *vs.* Laura Patterson *et al.* and hereunto annexed as follows, to wit:

122 Record. No. —.

In the Court of Appeals of Maryland.

ESTHER S. BUCHANAN, Individually and as Adm'x of William B. Buchanan and Wilson Carey Buchanan,
vs.
LAURA PATTERSON and Others.

Appeal from the circuit court No. 2 of Baltimore city.

Filed July 20th, 1901.

Taylor & Keech, Herbert B. Stimpson, for appellants.
Arthur W. Machen, Arthur W. Machen, Jr., Frank P. Clark, for appellees.

123 Appeal from the circuit court No. 2 of Baltimore city.

Note by the Clerk.

All the papers and proceedings in this cause preceding those contained in this transcript of record have heretofore been transmitted to the October term 1900 of the court of appeals of Maryland on the 2 appeals heretofore taken in this cause by J. Louis Smith *et al.*, and by Laura Patterson *et al.*, the same being entitled in said court J. Louis Smith *et al.*, *vs.* Esther S. Buchanan *et al.* and Laura Patterson *et al. vs.* Same, 2 appeals on one record said papers and proceedings being omitted from this transcript according to the provisions of the statute in such cases made and provided.

Opinion and Decree of Court of Appeals.

(Filed 28th February, 1901.)

Court of Appeals of Maryland, January Term, 1901.

LAURA PATTERSON and Others
vs.
ESTHER S. BUCHANAN, Adm'r'x, and Others.

J. LOUIS SMITH and Others
vs.
ESTHER S. BUCHANAN, Adm'r'x, and Others.

Judge FOWLER delivered the opinion of the court:

In the latter part of the 18th century the firm of S. Smith & Buchanan, of Baltimore, Maryland, was largely engaged in mercantile transactions both at home and abroad. In the year 1798 this firm suffered losses by the unlawful seizure of ships and cargoes in which

it was interested, and it is for the injury thus sustained, that the plaintiff in this case, secured the payment of thirty-six thousand dollars to her as the administratrix of William B. Buchanan. The bill filed by her asks a court of equity to take jurisdiction, to direct and supervise the distribution of the fund among the parties whom the court may find to be entitled to participate therein according to the proportion and rule which it may declare should govern the same. The fund which has thus been brought into a court of equity for distribution among those legally and equitably entitled thereto, represents two claims generally known as "French spoliation claims." The origin and history of these claims — been set
124 forth in several of the reported cases, especially in Blagge vs. Balch, 162 U. S. 461, one of the most recent in which the Supreme Court of the United States has construed the acts of Congress relating to the subject-matter of this litigation, so that it will not be necessary here to do more than to say, that these claims arose out of illegal seizures and depredations by French cruisers upon American commerce. The persons who thus lost property and their descendants claimed that through the effect of a subsequent treaty between the United States and France, the former had assumed the payment of compensation for their losses. But it was not until 1885 that an act of Congress was passed providing that "such citizens of the United States, or their legal representatives, as had valid claims to indemnity upon the French government arising out of the illegal captures and confiscations prior to the ratification of the convention between the United States and the French Republic, concluded on the 13th September, 1800" might apply to the Court of Claims within two years from the passage of the act. It was especially provided, however, that the findings of the Court of Claims should not be conclusive either upon the United States or the claimants and that nothing in the act should be construed as committing the former to the payment of any such claims.

It was under the act of 20th January, 1885, that the plaintiff filed several petitions in the Court of Claims, based upon the seizure and confiscation of two vessels, the Jane and the Patapsco and their cargoes. The vessels were owned by Samuel Smith and James A. Buchanan in their individual capacities and cargoes by the firm of which they were the sole members.

Both losses occur-ed in 1798. It appears from the evidence that William B. Buchanan the plaintiff's intestate was not born until 1795, so that he was only three years old when the losses occurred, and can hardly be presumed, in the absence of evidence, to have been a member of the firm at that time. If he was not a member of the firm when the losses were sustained he, of course, was not an "original sufferer," and it is contended by the defendants that he and his representatives are therefore excluded from claiming in *that character* and that Samuel Smith and James A. Buchanan who at *that time* were the sole partners of the firm which sustained the loss are the only "original sufferers."

It appears from the evidence that the plaintiff's intestate did not become a member of the firm until 1818. The court below held,

however, that inasmuch as the plaintiff had made the claim in the character of administratrix of William B. Buchanan surviving partner of the firm, and the fund had been paid to her in that capacity, the defendants are stopped to deny her pretensions and that therefore the fund in her hands should be divided into three equal parts, one of such equal parts to go and be distributed to the next of kin of each of the three partners of the firm. It was also held by the court below that the distribution should be made according to the provisions of the Maryland statute of distribution.

From the decree embodying these views all the defendants have appealed on the ground that the fund should be divided
125 equally between Samuel Smith and James A. Buchanan the original sufferers and the original members of the firm of S. Smith & Buchanan. The second appeal was taken by J. Louis Smith and others on the ground that the distribution should not be made under our statute *per stirpes* but that all are to take as a class equally.

The case was earnestly and exhaustively argued on both sides but it does not seem to us that any serious questions are presented by either appeal.

I. The *first* appeal involves the question whether William B. Buchanan is entitled to share in the distribution of the fund as one of the original sufferers, because he was erroneously supposed to have been a member of the firm of S. Smith & Buchanan in 1878 and because the plaintiff as his administratrix was allowed to collect the money in question, whereas the real claimant should have been the personal representatives of James A. Buchanan who was the surviving partner of the firm as it existed in 1798.

Aside from all other views it seems to us too clear for controversy that if it be conceded, as it must be under the evidence that the plaintiff's *interest* Wm. B. Buchanan was not one of the original sufferers, she will not be allowed in a court of equity to participate in the distribution, except as one of the next of kin of James A. Buchanan. For it is apparent not from the acts of Congress under which these claims have been recognised and paid by the Government, as well as by the most recent decision of the Supreme Court of the United States (Blagge *vs.* Balch *supra*,) that the money paid for losses sustained was intended as a gratuity to the next of kin of the original sufferers who shall be living at the time the act was passed viz., 3rd March 1899. The mere fact that the claim was filed by the plaintiff in her name and as administratrix, &c. is immaterial. The whole record shows beyond question that she represented with their consent all the parties who are now claiming against her.

But it is contended that the judgments and findings of the Court of Claims in connection with the action of Congress are conclusive, and that, therefore, all are bound by the decision of that court that the plaintiff was in fact the administratrix of Wm. B. Buchanan and that he was the survivor of the firm, and that therefore he was one of the original sufferers.

We cannot, however, agree to this view. On the contrary it seems

to us clear from a careful inspection of the record that the question as to whether the plaintiff was in fact the proper formal party to file the petition in the Court of Claims was never suggested to or considered by that court. Indeed it seems to have been conceded on all hands and properly so that she was the representative of the surviving member of a firm. But the mistake was in assuming that her intestate was a member of *the firm* as constituted at *the time* of the losses. Nor does it appear that this mistake was discovered until after the filing of the bill in this case, when it was learned from the testimony of the plaintiff that he was an infant only
126 three years old in 1798; and therefore could not have been a member of the firm of S. Smith & Buchanan when the losses were sustained. Nor do we think the act of Congress of 1899 appropriating money to pay these and other claims imparted to the reports or findings of the Court of Claims any element of finality except as to the amount of loss sustained by the original sufferers. In the case of Blagge *vs.* Balch, *supra*, Chief Judge Fuller thus quotes with approval from Buchanan *vs.* U. S. 24 Ct. of Cl. 74–81. When the amount of the claim has been determined and reported. It will then be within the legislative discretion.

(1.) To ascertain through the proper committees who are the persons who should receive the money; or

(2.) To provide for the ascertainment of that fact by additional legislation, or

(3.) To confide the money to the administrators trusting that they and the courts of which they are the officers and agents will distribute the funds among next of kin of the original claimants.

In our opinion Congress adopted the last course in passing the act of 1899, whereby money was appropriated and directed to be paid to the plaintiff as administratrix. In none of the cases relating to French spoliation claims, "under the act of 1885" has the Court of Claims "assumed to determine who were the next of kin of a deceased claimants. In other words, the court has not assumed to determine what persons are legally or equitably entitled to receive the money which Congress may hereafter appropriate for the discharge of these claims." Blagge *vs.* Balch, *supra*. And finally by the very terms of the act itself the findings are only advisory and do not fix or attempt to fix judicially the rights of any person. As was suggested in Buchanan *vs.* U. S. *supra*, Congress might have ascertained through the proper committees or have provided by legislation for the ascertainment of the beneficiaries, but they did not exercise that power by the act of 1899, which appropriated the money to pay the claims. The case of United States *vs.* Gilliatt, 164 U. S., 44, was relied on to show the conclusiveness of the finding of the Court of Claims in cases under the act of 1885 and of that court's certificate to the Treasurer of the United States as to the proper person to be paid. But an examination of that case will show that it is not in point. The Court of Claims in Gilliatt's case was acting under the specific act of August 23rd, 1894, which the Supreme Court held on appeal made the decision and certificate of the former court final, but at the same time declared that its findings

in cases like these now before us under the provisions of the act of 1885 are only advisory. We conclude, therefore, that there is nothing either in the finding and certificate of the Court of Claims or in the legislation of Congress which estops the defendants from showing who were the original sufferers, nor from showing that in point of fact Wm. B. Buchanan was not a partner of the firm of S. Smith & Buchanan in 1798 when its property was destroyed and the loss incurred.

127 II. We have already referred to the fact that Wm. B. Buchanan was born in 1795, and of course he could not have been in the ordinary sense of that term a partner in 1798. But in addition to this convincing fact it is shown that James A. Buchanan the junior member of the original firm, in a deposition made in insolvency proceedings in 1821 said his son Wm. B., was taken into the firm in 1818. In the same deposition he also said that certain old accounts which had been closed and had been unexpectedly collected had been used by his senior partner Samuel Smith and himself in equal portions. In the year 1820 the firm consisting of S. Smith, Jas. A. Buchanan and his son Wm. B. failed, and executed a deed of trust to Thomas Ellicott and Jonathan Meredith.

These trustees in a memorial addressed to the commissioners appointed under a treaty of 1819, stated *the* Samuel Smith and James A. Buchanan trading as the firm of S. Smith & Buchanan were in the year 1797 owner of one-half of the Jane and suffered the losses in question. The facts point strongly to the conclusion that up to the year 1818 Wm. B. Buchanan had no interest in the firm. In fact the only ground to sustain even a supposition to the contrary is the mistake made by the plaintiff and by those who conducted the case before the Court of Claims. If the mistake had been called to the attention of the Court of Claims the proceedings would undoubtedly have been amended or as in the case of "*The Clio*" *27 Ct. of Cl. 221* that court would have said that inasmuch as it appeared that the administratrix in fact represented the descendants and next of kin of the original claimants and that she was prosecuting the claim with their knowledge and at their request, the technical error of taking out letters of administration upon the estate of a subsequent member of the firm, that is of one who was not a member of the firm when the loss was sustained " will not preclude the court from rendering a decision upon the merits and reporting the case to Congress." Indeed all the decisions relating to these spoliation claims appear to rest upon the rule that as provided by the jurisdictional act of January 20th 1885 the Court of Claims was to examine and determine the *validity* and *amount* of all claims included within the description contained in the act, and, as was said in United States *vs.* Gilliatt, 164 U. S. 45 the particular person to whom the appropriation already made by Congress was to be paid was a subsidiary question.

If however, as we hold, the defendants are not estopped by the findings or certificates of the Court of Claims and if as we have also held there is nothing in the acts of Congress to prevent the courts of this State from now correcting the mistake made by those

who instituted the proceedings, can there be any doubt that when the plaintiff has come into a court of equity asking that the fund may be distributed to those entitled, that the distribution will be made to the real beneficiaries namely the next of kin of Samuel Smith and James A. Buchanan living March 3rd, 1899, the date of the passage of the act making the appropriation? As is said by counsel for defendants in their brief, the plaintiff "asks equitable relief, puts the fund under the jurisdiction of the court of equity
128 and prays it may be distributed according to equity." To make the distribution in the manner now suggested by her counsel on her behalf and divert one-third of the fund away from the lawful course and appropriate it to herself and her brother, because of the accidental advantage given by her position as collector and trustee, and the manner in which the proceeding for its collection was by mistake, shaped by counsel who intended to act for the common benefit of all interested would enable a trustee to abuse her position and commit a breach of trust. It would make the court go contrary to the rule under which its doors are opened that he who seeks equity must do equity. It would not accord with the prayer of the bill.

III. The question as to the proper rule of distribution of the fund is presented by the second appeal and we will briefly consider it. It would seem, however, that since the decision of the Supreme Court of the United States in the case of Blagge *vs.* Balch, *supra* construing words in act of 1891 precisely the same as those in act of 1899 there can be little or no room for further discussion upon this subject. It was there said that Congress in order to reach the next of kin of the original sufferers, capable of taking at the time of distribution, on *principals* universally accepted as the most just and equitable, intended next of kin according to the statutes of distribution of the respective States of the domicile of the original sufferers. The Supreme Court of the United States having therefore so clearly declared what is the proper construction of the act of Congress it is our duty to follow it and the result is that the fund must be distributed according to the provisions of our statute of distribution *per stirpes* and not *per capita*.

IV. It appears from the evidence that one of Samuel Smith's daughters, Mary Buchanan Smith married a British subject John Man-field and resided in England until her death. Her husband is also dead. They left a number of children surviving them, but how many, if any, are now alive is not known. The question whether the descendants of Mrs. Mansfield are entitled to share in the distribution of the fund was not passed upon by the court below, and is not properly before us on these appeals, although counsel representing some of the defendants argued it both in their brief and orally. When the cause is remanded this question may properly be presented to and passed on by the court below.

It follows that the decree appealed from must be reversed in so far as it directs the fund to be divided into three equal parts and directs one of those parts to be distributed to Wm. B. Buchanan and affirmed as to the rule of distribution adopted.

Decree reversed in part and affirmed in part. Cause remanded, costs to be paid out of fund.

129 Court of Appeals of Maryland, January Term, 1901.

LAURA PATTERSON, SIDNEY T. DYER, and ELISHA DYER, JR.,
vs.
ESTHER S. BUCHANAN, Administratrix, *et al.*

J. LOUIS SMITH ET AL.
vs.
ESTHER S. BUCHANAN, Administratrix, *et al.*

The appeal in this case standing ready for hearing was argued by counsel for the respective parties, and the proceedings have since been considered by the court.

It is thereupon, this seventeenth day of January A. D. 1901 by the court of appeals of Maryland, and by the authority thereof, adjudged ordered and decreed that the decree of the circuit court number two, of Baltimore city made in this cause on the twenty-eighth day of June in the year nineteen hundred, be and the same is hereby affirmed in part and reversed in part, and the cause remanded to the end that further proceedings may be had in conformity with the opinion of this court, the costs to be paid out of the fund to be distributed.

JAS. McSHERRY.
DAVID FOWLER.
JOHN P. BRISCOE.
A. HUNTER BOYD.
JAMES A. PEARCE.
SAM'L D. SCHMUCKER.
I. THOMAS JONES.

Pattison's *et al.* costs in court of appeals	$112 25
Smith *et al.* costs in court of appeals	90 40
Buchanan *et al.* costs in court of appeals	84 60

STATE OF MARYLAND, *sct:*

I, J. Frank Ford, clerk of the court of appeals of Maryland do hereby certify, that the foregoing is truly taken from the record of proceedings of the said court of appeals.

In testimony whereof, I have hereunto set my hand as clerk, [L. S.] and affixed the seal of the said court of appeals, this twenty-fifth day of February, A. D. 1901.

J. FRANK FORD,
Clerk Court of Appeals of Maryland.

130 *Petition of Virginia A. Smith, Administratrix of J. Louis Smith, to be Substituted as a Party Defendant.*

(Filed 16th April, 1901.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON CAREY BUCHANAN ET AL.

To the honorable the judge of said court:

Your petitioner, Virginia A. Smith, respectfully shows to the court:

That on the — day of December, 1900, J. Louis Smith, one of the defendants in this cause, died, and that on the 27th day of March, 1901, your petitioner was duly appointed by the orphans' court of Baltimore city, administratrix of the said J. Louis Smith, as will more fully appear from the certificate of the orphans' court filed herewith.

Wherefore your petitioner prays that she, as administratrix of the said J. Louis Smith, be substituted for the said J. Louis Smith as one of the defendants herein.

And your petitioner will ever pray and etc.

FRANK P. CLARK,
Sol. for Petitioner.

Certificate of Orphans' Court of Baltimore City,

(Filed with aforegoing petition.)

THE STATE OF MARYLAND, *Baltimore City,* } *sc:*

The subscriber, register of wills for Baltimore city, doth hereby certify that it appears by the records in his office that letters of administration of all the goods, chattels, credits and personal estate of J. Louis Smith, deceased, were on the 27th day of March in the year of our Lord one thousand nine hundred and one granted unto Virginia A. Smith, the ex-cutrix by the last will and testament of the said deceased appointed.

In testimony whereof, I hereunto subscribe my name and [L. S.] affix the seal of my office this 15th day of April, in the year of our Lord nineteen hundred and one.

STEPHEN R. MASON,
Register of Wills for Baltimore City.

Order of Court on Aforegoing Petition.

(Filed 16th April, 1901.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON CAREY BUCHANAN ET AL.

131 Ordered on the foregoing petition by the circuit court No. 2, of Baltimore city, on this 16th day of April, 1901, that Virginia A. Smith, administratrix of J. Louis Smith, be, and she is hereby made a defendant in this cause in lieu of the said J. Louis Smith, deceased.

J. UPSHUR DENNIS.

Petition of Mary Coles Carter, Administratrix d. b. n., c. t. a., of Samuel Smith, Deceased, to be Substituted as a Party Defendant, etc.

(Filed 16th April, 1901.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON CAREY BUCHANAN ET AL.

To the honorable the judge of said court:

Your petitioner, Mary Coles Carter, one of the defendants in this cause, respectfully shows to the court:

That on the — day of December 1900, J. Louis Smith adm. *d. b. n. c. t. a.* of Samuel Smith deceased, also one of the defendants in this cause, died, and that on the 27th day of March 1901, your petitioner was duly appointed by the orphans' court of Baltimore city in his place as administratrix *d. b. n. c. t. a.* of the said Samuel Smith as will more fully appear from the certificate of the orphans' court filed herewith.

Wherefore your petitioner prays that she as administratrix *d. b. n. c. t. a.* of the said Samuel Smith be substituted for J. Louis Smith. adm. *d. b. n. c. t. a.* of the said Samuel Smith as one of the defendants herein.

And your petitioner will ever pray.

FRANK P. CLARK,
Solicitor for Petitioner.

Certificate of the Orphans' Court of Baltimore City.

(Filed with aforegoing petition.)

STATE OF MARYLAND, *Baltimore City,* } *sc:*

The subscriber register of wills for Baltimore city doth hereby certify that it appears by the records in his office that letters of administration, *de bonis non* with the will annexed of all the goods, chattels, credits and personal estate of Samuel Smith, deceased, was on the 27th day of March in the year of our Lord one thousand nine hundred and one granted and committed unto Mary C. Carter who was then and there appointed administratrix *de bonis non* with the will annexed of the said deceased.

132 In testimony whereof, I hereunto subscribe my name and affix the seal of my office this 15th day of April in the year [L. S.] of our Lord nineteen hundred and one.

STEPHEN R. MASON,
Register of Wills for Baltimore City.

Order of Court Passed on the Aforegoing Petition.

(Filed 16th April, 1901.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON CAREY BUCHANAN ET AL.

Ordered by the foregoing petition by the circuit court No. 2 of Baltimore city on this 16th day of April, 1901, that Mary Coles Carter administratrix *d. b. n. c. t. a.* of Samuel Smith be, and she is hereby made a defendant in this cause in lieu of the said Robert Carter Smith deceased, adm. *d. b. n. c. t. a.* of Samuel Smith deceased.

J. UPSHUR DENNIS.

Petition of Mary Coles Carter to be Substituted as a Party Defendant, etc.

(Filed 16th April, 1901.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON CAREY BUCHANAN ET AL.

To the honorable the judge of said court:

Your petitioner Mary Coles Carter, one of the defendants in this cause respectively shows to the court:

That on the 13th day of February, 1900, Robert Carter Smith,

also one of the defendants in this cause died, and that your petitioner was duly appointed by the orphans' court of Baltimore city administratrix of the said Robert Carter Smith as will more fully appear from the certificate of the said orphans' court filed herewith.

Wherefore your petitioner prays that she as administratrix of the said Robert Carter Smith be substituted for him as one of the defendants herein.

And your petitioner will ever pray &c.

FRANK P. CLARK,
Sol. for Petitioner.

Certificate of Orphans' Court of Baltimore City.

(Filed with aforegoing petition.)

THE STATE OF MARYLAND, } *sc:*
Baltimore City, }

The subscriber, register of wills for Baltimore city, doth
133 hereby certify that it appears by the records in his office that letters of administration of all the goods, chattels credits and personal estate of Robert Carter Smith, deceased, were on the 12th day of March, in the year of our Lord one thousand nine hundred and one, granted and committed unto Mary C. Carter, who was then and there appointed administratrix of said deceased.

In testimony whereof, I hereunto subscribe my name and
[L. S.] affix the seal of said court and office this 15th day of April, in the year of our Lord nineteen hundred and one.

STEPHEN R. MASON,
Register of Wills for Baltimore City.

Order of Court on Aforegoing Petition.

(Filed 16th April, 1901.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL. }
vs.
WILSON CAREY BUCHANAN ET AL. }

Ordered on the foregoing petition by the circuit court No. 2 of Baltimore city on this 16th day of April, 1901, that Mary Coles Carter, administratrix of Robert Carter Smith, be and she is hereby made a defendant in this cause in lien of the said Robert Carter Smith, deceased.

J. UPSHUR DENNIS.

Decree.

(Filed 26th June, 1901.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON C. BUCHANAN ET AL.

The decree heretofore passed in this cause on the 28th day of June, 1900, having been reversed in part and affirmed in part by the court of appeals, and the cause remanded to the end that further proceedings may be had in conformity with the opinion of the court of appeals as appears by the proceedings, and the said cause coming on to be heard, the counsel of the parties were heard and all the proceedings were read and carefully considered.

It is thereupon this 26th day of June, 1901, by the circuit court No. 2 of Baltimore city, adjudged ordered and decreed in conformity with the said opinion of the court of appeals that the said fund in the hands of the plaintiff be divided into two equal parts, one whereof shall be distributed among the descendants living at the time of the passage of the act of Congress entitled "An act for the allowance of certain claims under the provisions of the act
134 approved March 3rd eighteen hundred and eighty-three, and commonly known as the Bowman act and for other purposes" approved March 3rd, 1899, of Samuel Smith, deceased, who was formerly a partner in the firm of S. Smith & Buchanan, and the personal representatives of such of them, the said then living descendants as have died since the passage of the said act; and the other of the said two equal parts of the said fund shall be distributed among the descendants living at the time of the passage of the said act of Congress of James A. Buchanan, deceased, who together with the said Samuel Smith composed the firm of S. Smith and Buchanan at the time of the seizure by the French mentioned in these proceedings.

And it is further adjudged and decreed that William B. Buchanan, not having been one of the original sufferers, his next of kin as such are not entitled to share in the distribution.

And it is further adjudged, ordered and decreed that the distribution of the aforesaid moieties respectively of the said whole fund for distribution shall be made in the manner following, that is to say, the part or moiety so allot-ed to descendants of the said Samuel Smith, deceased, shall be subdivided *unto* twenty-four equal parts, twelve whereof shall be distributed as follows, viz:

To the defendant Mary Coles Carter one of said twenty-four equal parts,

To the defendant Sallie R. Carter one of said twenty-four equal parts,

To the defendant Cary Ann Fink one of said twenty-four equal parts,

The the defendant Kate Prather Nicholas one of said twenty-four equal parts,

To the defendant Sarah Nicholas one of said twenty-four equal parts,

To the defendant Virginia A. Smith administratrix of the original defendant J. Louis Smith, who has died since the institution of this suit, three of the said twentyfour equal parts,

And to the defendant Mary Coles Carter, administratrix of the original defendant Robert Carter Smith, who has died since the institution of this suit, three of the said twenty-four equal parts.

And twelve of said twenty-four equal parts of the said moiety or half part of the said entire fund shall be equally divided between the defendant Laura Patterson and the defendant Sidney T. Dyer, that is to say, to the said Laura Patterson six of said twenty-four equal parts, and to the said Sidney T. Dyer, six of said twenty-four equal parts.

And the other one equal moiety or half part of the entire fund for distribution being the same allot-ed to the descendants of the said James A. Buchanan, deceased, shall be subdivided into thirty-two equal parts which shall be distributed as follows:

To the plaintiff Esther S. Buchanan eight of the said thirty-two parts,

135 To the defendant Wilson C. Buchanan eight of the said thirty-two parts.

To the defendant Richard P. Buchanan one of the said thirty-two parts.

To the defendant Esther Tyson one of the said thirty-two parts.

To the defendant Laura Wainwright one of said thirty-two parts.

To the defendant Eugene Lentelhon Jr. one of said thirty-two parts.

To the defendant Clement C. Smith four of said thirty-two parts.

To the defendant Ellen Buchanan four of said thirty-two parts.

To the defendant Marie Buchanan two of said thirty-two parts.

And to the defendant Charles M. Buchanan two of said thirty-two parts.

And it is further ordered and decreed that the costs of this cause incurred on both sides in this court and the costs both of appellants and appellees in the court of appeals upon said former appeals shall first be paid out of the fund before the making of the said distribution.

And it is further ordered and decreed that this cause be referred to an auditor to state an account in conformity herewith.

J. UPSHUR DENNIS.

Order for Appeal on Behalf of Esther S. Buchanan Individually and Administratrix of William B. Buchanan, Deceased, and of Wilson Cary Buchanan, from Decree Passed 26th June, 1901.

(Filed 27th June, 1901.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON C. BUCHANAN ET AL.

Mr. Clerk:

Enter an appeal on behalf of Esther S. Buchanan, individually and as administratrix of William B. Buchanan deceased and of Wilson Cary Buchanan from the decree passed in this cause on the twenty-sixth day of June, 1901, to the next court of appeals of Maryland.

TAYLOR & KEECH,
Solicitors for Appellants.
HERBERT B. STIMPSON,
Solicitor for Wilson Carey Buchanan.

STATE OF MARYLAND, *City of Baltimore*, *To wit:*

June 27, 1901.—This day personally appeared Edward P. Keech and made oath in due form of law on behalf of the above-
136 named appellants that this appeal is not taken for delay and that he is authorized to make this affidavit.

ALFRED J. SCHULTZ, *Clerk.*

Appellants' Order for Making Up Record.

(Filed 27th June, 1901.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON C. BUCHANAN ET AL.

Mr. Clerk:

In making up the record to be transmitted to the court of appeals of Maryland, on the appeal of Esther S. Buchanan, individually and as *of* administratrix of William B. Buchanan, deceased, of William Carey Buchanan from the decree entered in this cause on the twenty-sixth day of June, 1901, omit from the same all papers and proceedings contained in the transcript of the record heretofore transmitted to the court of appeals in the above-entitled cause on the two appeals of J. Louis Smith *et al.*, and Laura Patterson, *et al.*, from the decree entered herein on the 28th day of June, 1900, according to the Code of Public General Laws of this State, article 5

section 41 etc.; include in the same, however, the following additional paper and proceedings:—

1. Opinion and mandate of court of appeals filed herein Feb. 28, 1901.
2. Petition of Virginia A. Smith, administratrix of J. Louis Smith and order of court thereon filed April 16, 1901, and any exhibits accompanying same.
3. Petition of Mary Coles Carter administratrix of Samuel Smith, deceased and order thereon filed April 16, 1901 and any exhibit accompanying same.
4. Petition of Mary Coles Carter administratrix of Robert Carter Smith, deceased, and order thereon filed April 16—1901 and any exhibit accompany- same.
5. Decree herein passed June 26—1901—
6. Order of appeal filed June 27—1901.
7. This order filed June 27—1901

HERBERT B. STIMPSON,
TAYLOR & KEECH,
Solicitors for Appellants.

Which said appeal being by the court here, also granted, it is thereupon ordered by the court here that a transcript of the record of proceedings in the case aforesaid be transmitted to the court of appeals of the State of Maryland in accordance with order of appellants' solicitors and the same is transmitted accordingly.

Test: ALFRED J. SCHULTZ, *Clerk.*

137 In testimony whereof that the foregoing is a full and true transcript of the aforegoing papers taken from the record of proceedings in the circuit court No. 2 of Baltimore city in the cause therein mentioned.

I hereto set my hand and affix the seal of the said (Seal's place.) circuit court No. 2 of Baltimore city this 18th day of July in the year of our Lord nineteen hundred and one.

Test: ALFRED J. SCHULTZ, *Clerk.*

And now come into the court of appeals here, as well the said Esther S. Buchanan individually and as administratrix of William B. Buchanan and Wilson Cary Buchanan by Messrs. Taylor, Keech and Herbert B. Stimpson her attorneys, as the said Laura Patterson and others by Arthur W. Machen, Arthur W. Machen, Jr. and Frank P. Clark their attorneys and thereupon, on motion of the said Laura Patterson and others by their attorneys aforesaid, it is ruled by the court here, that the said Esther S. Buchanan individually and
138 as administratrix of William B. Buchanan and Wilson Cary Buchanan assign the errors in the record of proceedings aforesaid, or in the giving the judgment aforesaid so as aforesaid brought before the court of appeals here for correcting the errors supposed to be therein, or judgment by the court of appeals here, will be entered against them in default thereof; and the said Esther S. Buchanan

individually and as administratrix &c. by her attorneys aforesaid, says that in the record of proceedings aforesaid, and also in the giving of judgment aforesaid, there is manifest error in this, to wit; that by the record aforesaid, it appears that the judgment aforesaid, in the plea aforesaid given, was given for the said Laura Patterson and others against the said Esther S. Buchanan &c., when by the law of the land, that judgment ought to have been given for the said Esther S. Buchanan &c. against the said Laura Patterson and others, therefore, in that there is manifest
139 error, and she prays that the judgment aforesaid for that error and others, being in the record of proceedings aforesaid, may be reversed, annulled, and held entirely as void, and that she the said Esther S. Buchanan, &c. may be restored to all things which she hath lost by occasion of the said judgment and that the said Laura Patterson and others may rejoin to the errors aforesaid, and so forth; and thereupon it is ruled by the court of appeals here, that the said Laura Patterson *et al.* join in the errors by the said Esther S. Buchanan, &c. above assigned in the record of proceedings aforesaid, or judgment by the court of appeals here, will be rendered against them in default thereof; and the said Laura Patterson and others by their attorneys aforesaid, say there is no error in the record of proceedings aforesaid, nor in the giving of the judgment aforesaid, and they pray that the court of appeals here will
140 proceed to the examination as well of the record of proceedings aforesaid, as of the matters aforesaid, by the said Esther S. Buchanan, &c. above for error assigned and that the said judgment may be in all things affirmed, and so forth; thereupon further process of and upon the premises, between the parties aforesaid is, by virtue of an act of assembly in such cases made and provided, continued before the court of appeals here until the second Monday in January next; and now at this day, to wit, the said second Monday in January, being the 13th day of the said month, in the year of our Lord one thousand nine hundred and two come again into the court of appeals here, the parties aforesaid by their attorney aforesaid.

Whereupon as well the record and proceedings aforesaid, and the judgment given in form aforesaid, as the matters aforesaid, by the said Esther S. Buchanan individually and as administratrix of William B. Buchanan and Wilson Cary Buchanan above for error assigned, being seen, and by the court of appeals here fully understood,
141 and mature deliberation thereupon had, for that it appears to the court of appeals here, that there is no error in the record of proceedings aforesaid, nor in the giving of the judgment aforesaid: Therefore it is considered by the court of appeals here, that the judgment aforesaid, given in form aforesaid, be in all things affirmed and stand in full force and effect, the said causes for error above assigned and alleged in anywise, notwithstanding. And it is further considered by the court of appeals here, that the said Laura Patterson and others have execution against the said Esther S. Buchanan, &c. as well for the costs and charges aforesaid adjudged unto them in the said circuit court No. 2 of Baltimore city

as also the sum of — adjudged unto the said Laura Patterson and others by the court of appeals here, on their assent for their costs and charges which they have sustained by occasion of the delay of the execution of the judgment aforesaid, by pretext of the
142 prosecution of the said appeal by the said Esther S. Buchanan &c. for the correcting of errors of and upon the premises as aforesaid, prosecuted, &c.

And on the 30th day of January, A. D. 1902, was filed in the office of the clerk of the court of appeals of Maryland a certain opinion in the words and figures following to wit:

143 Court of Appeals of Maryland, January Term, 1902.

ESTHER S. BUCHANAN ET AL.
vs.
LAURA PATTERSON ET AL.

Filed January 30th, 1902.

Judge JONES delivered the opinion of the court.

This case was heretofore before this court with reference to questions raised as to who were entitled to participate in the fund then in the hands of Esther S. Buchanan, administratrix of William B. Buchanan by reason of an appropriation to her as such administratrix by the act of Congress of 1899 appropriating moneys to pay French spoliation claims, and as to the rule for distribution to be observed in ascertaining the shares of those entitled to participate therein (see case of Patterson and others *vs.* Buchanan adm'r &c., 92 Md. 334). Upon the first appeal the decree of the court below
144 was reversed in part and affirmed in part and the case remanded for a decree in accordance with the opinion of this court. This is an appeal from the decree passed by that court upon the remand. The case was instituted by Esther S. Buchanan individually and as administratrix of William B. Buchanan and administratrix *d. b. n., c. t. a.* of James A. Buchanan to put the funds in her hands under the jurisdiction of a court of equity and get the direction of the court in making distribution thereof. Esther S. Buchanan and Wilson C. Buchanan her co-appellant here are children of William B. Buchanan and grandchildren of James A. Buchanan. The money to be distributed was appropriated for payment of a so-called French spoliation claim—the losses giving rise to the claim having been sustained by the firm of S. Smith & Buchanan. This firm was at first composed of Smith and James A. Buchanan, and later of these two and William B. Buchanan who survived the other members of the firm. Because
145 of his being the surviving member of this firm the administratrix of William B. Buchanan presented and was paid the claim for the losses of the firm. Upon the former appeal this court decided, that the evidence in the cause showing that William B. Buchanan was not a member of the partnership when the losses occurred for which the appropriation in hand was made, his next of

kin, as such, were not entitled to share in the fund to be distributed. Accordingly by the decree passed upon the remand of the case the next of kin of William B. Buchanan were not admitted, as such, to shares of the fund distributed; and the same was distributed wholly to the next of kin of the other two members of the partnership, who were living at the date of the decree, and to the administrators of two of these next of kin who had died since the institution of
146 the proceedings in the cause and prior to the decree. The only next of kin of William B. Buchanan, who were living at the date of the act making the appropriation in question, were the appellants here Esther S. Buchanan and Wilson C. Buchanan, her brother. When the proceedings in this cause were instituted for the purposes indicated Wilson C. Buchanan was placed upon the docket as a defendant, and under the bill process went against him as such. When the proceedings culminated in the decree passed by the lower court under the directions of this court contained in its former opinion the appellants here united in an order of appeal from the decree as follows

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON C. BUCHANAN.

"Mr. Clerk:

147 Enter an appeal on behalf of Esther S. Buchanan, individually and as administratrix of William B. Buchanan deceased, and of Wilson Cary Buchanan from the decree passed in this cause on the twenty-sixth day of June 1901, to the next court of appeals of Maryland"—which was signed by their respective solicitors. It is insisted here on behalf of the appellees that the appeal thus brought up ought to be dismissed.

1st. Because it is a joint appeal of a plaintiff and a defendant.

2nd. Because Esther S. Buchanan is both appellant and appellee—appellant in her own right and as administratrix of William B. Buchanan and appellee as administratrix of James A. Buchanan.

It is provided by our Code art. 5 sec. 24 that "an appeal shall be allowed from any final decree or order in the nature of a final decree, passed by a court of equity, by any one or more of the
148 persons parties to the suit, with or without the assent or joinder of plaintiffs or codefendants in such appeal: provided that if the court of appeals shall affirm the decree of the court below, they shall not award costs of the appeal against any one except the appellant." This law was enacted in its present form in 1864 (see act 1864 chap. 156) and shortly after and probably in consequence of the decision of this court in the case of Lovejoy *vs.* Ireland 17 Md. 525 in which it was held that in a suit in equity in which there had been a decree against two or more defendants jointly one or more of such defendants could not appeal from the decree without joining all of their co-defendants unless after summons and severance. The statute not

only provided against the recurrence of the hardships that might at any time arise from the rule of practice which was
149 enforced in the case just referred to, but also indicated a policy of the law to disembarrass the valuable right of appeal, and to prevent the obstruction of the rights by the use of technical restrictions upon its exercise: The courts should administer the statute in the spirit of this policy. In a case of the character of the one at bar all the parties thereto are in a sense actors. They are not before the court, primarily at least, for the purpose of asserting and enforcing rights on one side, which are denied and resisted on the other; but for the common object of procuring an orderly and authoritative distribution among them of a fund in which they have interests thus to be ascertained and set apart. The placing of the parties upon the docket and their classification into plaintiffs and defendants are to a great extent matters of arbitrary arrangement; and are determined more from considerations of convenience
150 than from those which rules of practice ordinarily require to be observed in arranging parties to a suit. It would be difficult, indeed, and often impracticable to so arrange or classify parties, in a proceeding such as this, to preserve throughout the adjudication of questions pertaining to their rights, the adverse attitude indicated by the positions assigned them in the suit as plaintiffs or defendants. It frequently occurs that those who may be assigned adverse attitudes in the proceedings of the institution thereof are afterwards brought together by a common interest either in maintaining or questioning matters of adjudication in which they have a joint or common concern. To insist upon a severe exactness in maintaining in such cases the technical relation of the parties to the record irrespective of their real relations to any controverted
151 matter would be to embarrass them in carrying on the litigation and hinder them in their substantial rights.

Now there is no doubt that in the state of case that we have here both of the appellants in their individual capacities were affected by the decree below in such a manner as to entitle them to an appeal therefrom. It would seem to be altogether immaterial whether in prosecuting such appeal they gave such a separate order or united through their respective counsel in one order of appeal. In either case the matters to be presented here upon the appeal would be presented in the one record according to accepted and recognized practice; and as the interests involved, as to both the individual appellants, are precisely the same; and the questions to be determined are identical, making the determination thereof as to one the same as that as to the other; and as they have been affected in the same way and in the same right by the decree appealed from and by the same part of the decree thus mak-
152 ing their interest in the appeal in every aspect identical there certainly can be nothing substantial in the objection urged that the counsel for the parties appealing united in the one order. The same may be said of the uniting in the same order of one of the appellants in her representative capacity. The individual appellants were all the next of kin of William B. Buchanan and represented the entire

interest in the fund which was being distributed in the court below claimed by title under him. The appellant administratrix represented that same interest, and her appeal presented the same identity as to questions to be determined, called for the same identity of decision and was from the same part or feature of the decree below as was the appeal of the individual appellants. Parties appealing under the circumstances presented by this case, and having the same common cause of appeal as exists here are not appealing against
153 each other. There is no necessity therefore for cross-appeals notwithstanding they may be on opposite sides of the docket in the trial court. No good reason can be assigned why there should be separate appeals; nor why in the interest of good practice they should not unite in the one order of appeal. The other ground assigned for dismissing the appeal, that one of the appellants, is both appellant and appellees is equally untenable. The appellant referred to appeared on the docket below in her individual capacity, as administratrix *d. b. n. c. t. a.* of one party and as administratrix of another. That is she appeared in three several capacities in each of which she was in contemplation of law and for the purposes of the particular capacity a different person with, distinctive rights, powers and duties pertaining to each. In this sense she was co-plaintiff with herself. She had the right to appeal individ-
154 ually and the right to do so in either or both of her representative capacities. Littig *vs.* Hance 81 Md. 416. In appealing in one or more of these capacities without uniting them all in the appeal she was within the very letter as well as the spirit of the statute we have quoted which provides for an appeal by one or more plaintiffs or codefendants without joining the coplaintiffs or codefendants. We see no ground for dismissing the appeal. We do not think it necessary to review and criticise authorities referred to in the argument of the case. We have found none of them much in point under the circumstances of this case. Those cited by the counsel for the appellees were cases in which there was no attempt to unite in the appeal interests that were antagonistic, or, as in the case of Owens *vs.* Crow 62 Md. 491, where circumstances showed the same will in control of both sides of the controversy. In this case the suit has been brought as this
155 court indicated in case of Owens *vs.* Crow *supra*, it should be. The plaintiff, who instituted the proceedings in her representative as well as her individual capacity, made parties thereto, all of those whose interests she represented and they were in court to protect their interests. We do not propose to discuss here again the merits of this case—we see no reason for disturbing the former decision upon the points there adjudicated nor to supplement in any way what was there said. We may say that an examination of the additional authorities in that connection to which our attention has been called by counsel for the appellants shows that they would have had no influence upon the decision of the questions determined on the former appeal. These are the cases of U. S. *vs.* Louisville 169 U. S. 249, and U. S. *vs.* Jordan 113 U. S. 418 and are both cases in

which a specific appropriation had been made by act of Con-
156 gress to a named and ascertained party, leaving the Govern-
ment officials nothing to do except to pay over the money so appropriated. In the case here Congress made an appropriation for the benefit of a class, and it was paid over to a trustee whose duty was to ascertain who were members of that class within the meaning of the act of appropriation. The jurisdiction of our courts to determine questions as to who were entitled to share in the appropriation grew out of this duty imposed upon the trustee.

We are confined in disposing of this appeal entirely to questions affecting the rights of the parties who have brought this appeal and not finding that the appellants have been prejudiced by the decree of the court below the same will be affirmed.

Decree affirmed with costs to the appellees.

And on the same day and year last mentioned the said court
157 of appeals filed the following decree, to wit:

Court of Appeals of Maryland, January Term, 1902.

ESTHER S. BUCHANAN ET AL.
vs.
LAURA PATTERSON ET AL.

The appeal in this case standing ready for hearing, was argued by counsel for the respective parties, and the proceedings have since been considered by the court.

It is thereupon, this thirtieth day of January A. D. 1902, by the court of appeals of Maryland, and by the authority thereof, adjudged, ordered and decreed that the decree of the circuit court number two of Baltimore city made in this cause on the twenty-sixth day of June in the year nineteen hundred and one be and the same is hereby affirmed with costs to the appellees.

JAS. McSHERRY.
DAVID FOWLER.
158 HENRY PAGE.
JAMES A. PEARCE.
SAM'L D. SCHMUCKER.
I. THOMAS JONES.

And afterwards to wit, Feb'y 17th, 1902, there was filed in said case certain bond in the words and figures following to wit:

Know all men by these presents, that we, Esther S. Buchanan, individually, and as administratrix of William B. Buchanan, deceased, and also on behalf of Wilson Cary Buchanan, as principal, and the Fidelity and Deposit Company of Maryland, a body corporate duly incorporated, as surety, are held and firmly bound unto Laura Patterson, Sidney T. Dyer and Elisha Dyer, Junior, her husband, Virginia A. Smith, executrix of J. Louis Smith, deceased, Mary Coles Carter, Sally Carter, Robert Smith Carter, Cary Ann Fink and Rudolph

Fink, her husband, Kate Prather Nicholas, Sarah Nicholas
159 Mary Coles Carter, administratrix *d. b. n. c. t. a.* of Samuel Smith, deceased, Mary Coles Carter, administratrix of Robert Carter Smith, deceased, Richard P. Buchanan, Esther B. Tyson and James W. Tyson, her husband, Laura B. Wainwright and J. Mayhew Wainwright, her husband, Clement C. Smith, Eugene Lentilhon, Junior, Ellen Buchanan, Marie Buchanan, Charles Buchanan, the unknown next of kin and personal representatives and distributees of Mary B. Smith, who married John Mansfield, any and all unknown next of kin and distributees claiming by, under or through the said William B. Buchanan, deceased, or the said James A. Buchanan, deceased, or the said Samuel Smith, deceased, and the unknown personal representatives, next of kin and distributees of Hetty Cary Martin and H. Newell Martin, and each of them, both now deceased, and Esther S. Buchanan, administratrix *d. b. n., c. t. a.*
160 of James A. Buchanan, deceased, in the full and just sum of one thousand dollars ($1,000), to be paid to the above-named obligees, their certain attorney, executors, administrators, or assigns, to which payment well and truly to be made, we bind ourselves, or heirs, executors, administrators and successors, jointly and severally by these presents, Signed and sealed by the said Esther S. Buchanan, as hereinbefore set forth, and signed by the said Edwin Warfield president of said Fidelity and Deposit Company of Maryland, on behalf of said body corporate, and sealed with its seal, and dated this 7th day of February, in the year of our Lord one thousand nine hundred and two.

Whereas lately at a court of appeals of the State of Maryland in a suit depending in said court between the said Esther S. Buchanan, administratrix etc. and others, as appellants, and the said Laura Patterson and others, as appellees, a decree was rendered against the said Esther S. Buchanan, individually and
161 as administratrix of William B. Buchanan, deceased, and the said Wilson Cary Buchanan, and the said parties having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said obligees above named, citing and admonishing them to be and appear in a Supreme Court of the United States at Washington, within thirty days of the date hereof,

Now the condition of the above obligation is such, that if the said Esther S. Buchanan, individually, and as administratrix of William B. Buchanan, deceased, and Wilson Cary Buchanan, shall prosecute said writ of error to effect, and answer all damages and costs, if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

162 ESTHER S. BUCHANAN, [SEAL]
Individually and as Administratrix of William B. Buchanan, Deceased, and on Behalf of Wilson Cary Buchanan.

(Seal's place.) FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
By EDWIN WARFIELD, *President.*

Sealed and delivered by the said Esther S. Buchanan, in presence of—

E. P. KEECH, JR.

Attest: THOS. L. BERRY,
Ass't Secretary.

Approved.

JAS. McSHERRY,
Chief Judge of the Court of Appeals of Maryland.

163 STATE OF MARYLAND, *sct:*

I, Thomas Parran, clerk of the court of appeals of Maryland do hereby certify that the foregoing is a true transcript of the record and proceedings in the case of Esther S. Buchanan, &c., *vs.* Laura Patterson and others as the same remains on file in the clerk's office of the said court of appeals,

And I do further certify that the said court of appeals of Maryland is the highest court of law or equity in said State in which a decision can be had in said case.

Seal Court of Appeals, Maryland.

In testimony whereof, I have hereunto subscribed my name as clerk of the said court of appeals of Maryland, and affixed the seal of the said court, on the fifth day of March A. D. 1902.

THOMAS PARRAN,
Clerk Court of Appeals of Maryland.

Endorsed on cover: File No. 18,440. Maryland court of appeals. Term No. 266. Esther S. Buchanan, administratrix of William B. Buchanan, deceased; Esther S. Buchanan & Wilson Carey Buchanan, plaintiffs in error, *vs.* Laura Patterson, Sidney T. Dyer and Elisha Dyer, Jr., her husband, *et al.* Filed March 6th, 1902.

IN THE

Supreme Court of the United States.

TERM No. 266.

ESTHER S. BUCHANAN, Individually, and as Administratrix of WILLIAM B. BUCHANAN, Deceased, and WILSON CARY BUCHAHAN,
Plaintiffs in Error.

vs.

LAURA PATTERSON ET AL,
Defendants in Error.

In Error to the Court of Appeals of Maryland.

Brief on Behalf of Plaintiffs in Error.

STATEMENT OF CASE.

The decree which is the subject of the writ of error in this case was passed by the Court of Appeals of Maryland, the highest Court of that State, January 30, 1902, is set out on page 117 of the Record, and was a mere affirmance of the decree of the Circuit Court No. 2 of Baltimore City, dated June 26, 1901, and set out in the Record on page 108. That

latter decree states, that it is in conformity with the opinion of the Court of Appeals, dated February 28, 1901, which had reversed in part and affirmed in part a previous decree of the said Circuit Court, dated June 28, 1900, which previous decree of June 28, 1900, is to be found on page 91 of the Record. The opinion of the Court of Appeals, reversing in part the decree of June 28, 1900, appears in the Record, pages 97 to 103 (reported 92 Md. 334), and the opinion of the Court of Appeals affirming the decree here appealed from, is found on pages 113 to 117 of the Record, (reported in 94 Md. 534.)

The first decree of June 28, 1900, which was affirmed in part and reversed in part by the decree of the Court of Appeals of February 28, 1901, decided that the fund in this cause should "be divided into three equal parts, and that one of said three equal parts of said fund be distributed among the next of kin of each of the partners of the firm of S. Smith & Buchanan, to wit., of Samuel Smith, deceased, James A. Buchanan, deceased, and William B. Buchanan, deceased, in being on the 3d day of March, 1899, *per stirpes* and not *per capita*, treating the said Samuel Smith, James A. Buchanan and William B. Buchanan, respectively, as the original *stirps*, according to the laws of the State of Maryland and the statutes of this State in such cases made and provided." (See Record, page 91.)

This fund is the net amount of two French Spoliation Awards paid Esther S. Buchanan, administratrix of William B. Buchanan, surviving partner of the firm of S. Smith & Buchanan, by virtue and in pursuance of two Acts of Congress of the United States, approved January 20, 1885, and March 3, 1899, respectively, and certain decisions, findings and certificates of the Court of Claims of the United States, made under the terms of said Acts, in the two cases of the ship "Patapsco," Wm. Hill, Master, No. 2011, and of the ship "Jane," John Wallace, Master, No. 301, then pending in said Court of Claims.

This decree of June 28, 1900, was by the first decree of the Court of Appeals of Maryland, above referred to, "affirmed as

to the rule of distribution adopted," and reversed in so far as it directed the fund to be divided into three equal parts, and directed one of those parts to be distributed among the descendants of William B. Buchanan; the first decree of the Court of Appeals directing the entry by the Court below of a new decree distributing this fund among the descendants of Samuel Smith and James A. Buchanan only.

The decree of the Circuit Court No. 2 of Baltimore City, of June 26, 1901, affirmed by the decree of the Court of Appeals of date January 30, 1902, here appealed from, ordered that the "said fund in the hands of the plaintiff be divided into two equal parts, one whereof should be distributed among the descendants living at the time of the passage of the Act of Congress, etc., etc., known as the Bowman Act, approved March 3, 1899, of Samuel Smith, deceased, who was formerly a partner in the firm of S. Smith & Buchanan, etc., etc., and the other of said two equal parts of said fund shall be distributed among the descendants, living at the time of the passage of the said Act of Congress, of James A. Buchanan, deceased, who, together with the said Samuel Smith, composed the firm of S. Smith & Buchanan," etc., etc., and "it is further adjudged and decreed that William B. Buchanan, not having been one of the original sufferers, his next of kin, as such, are not entitled to share in the distribution." (See Record, page 108.)

In a word, the State Court undertook to construe the Acts of Congress in question and the effect of these certificates of the Court of Claims made pursuant to the said Acts, and the error charged is, that by this construction it took away from Esther S. Buchanan, administratrix, and from Esther S. Buchanan and Wilson C. Buchanan, as next of kin of William B. Buchanan, surviving partner in the firm of S. Smith & Buchanan, that partner's share in the awards.

This share, as had been decided by the lower State Court in its decree of June 28, 1900, which considered itself bound by the findings of the Court of Claims, was one equal third part. But the Court of Appeals of Maryland, in the decree appealed

from, decided that the Court of Claims of the United States made a mistake in its findings and awards, and that the said William B. Buchanan was not a partner in the said firm of S. Smith & Buchanan, the original sufferer of the losses in question, and that the Acts of Congress which gave his personal representative the awards, as such partner in such firm, should be so read and construed, as to give his representative for him and his next of kin, no share in such awards whatsoever, but that the whole award should be paid to the next of kin of the members of another firm, namely, a firm composed of Samuel Smith and James A. Buchanan, of which he was not a member. In a word, the State Court of Maryland said, that, although the Court of Claims has decided that, a firm, consisting of Samuel Smith, James A. Buchanan and William B. Buchanan, was the original sufferer of these losses, and entitled to the sum awarded, and Congress has recognized that finding, and ordered the Secretary of the Treasury to pay the sum to the administratrix of the surviving partner of that firm, and none other, which payment has been made by said Secretary in accordance therewith, yet we will, and do, find, upon a review of the evidence in that cause, that the original sufferer was another firm, consisting of Samuel Smith and James A. Buchanan, only, and we do therefore adjudge, that it be transferred to the representatives and next of kin of that other firm, from the representative of the firm to whom the Secretary of the Treasury paid the award by virtue of the findings of the Court of Claims and by the terms of the Act of Congress and upon authority of the Certificates of the Court of Claims.

The proceedings in the Court below from which the foregoing statement is briefed, may be catalogued as follows:

Bill of Complaint.

The bill of complaint was filed by Esther S. Buchanan, as an individual, and as administratrix of the estate of William B. Buchanan, deceased, surviving partner of S. Smith & Buchanan, and Esther S. Buchanan, administratrix *d. b. n.*,

e. t. a of James A. Buchanan, under the rule in Maryland, which requires that in whatever several capacities a party may appear in a cause, he must appear in all of them on one side of the record or the other, either as plaintiff or as defendant. The bill states (page 12 of Record, at bottom) that "your oratrix is advised that she holds said fund for the benefit of, and for distribution among, not only the next of kin of her own decedent, the said William B. Buchanan, but also the next of kin of the other partners of the firm of S. Smith & Buchanan, to wit, Samuel Smith and James A. Buchanan, in the proportions and according to the laws of distribution which your Honor may hold to be proper in this cause." The prayer is, "that this Honorable Court will assume jurisdiction of the fund in the hands of your oratrix, as administratrix, as herein set forth, and that it will direct and supervise the distribution of the same among the parties, whom the Court may find to be entitled to participate therein, according to the proportion and rule which this Court may declare to govern the same," etc.

NOTE.—It should be noted here, that the only legal effect and purpose for which the jurisdiction of the said Chancery Court of the State of Maryland was, or could be, asked, or invoked, according to the language of the Supreme Court in the case of Blagge vs. Balch, 162 U. S. 461, hereinafter cited, was the ascertainment under the Statutes of Distribution of the State of Maryland, of the next of kin of these several partners whom the Court of Claims and Congress had recognized as the original sufferers, and not the rehearing of the case and the determination by the Probate or Chancery Court of the State of Maryland, of the identity of the original sufferers. This was recognized by the decree of the Court dated June 28, 1900 (Record, page 91), passed by Judge Stockbridge, in which he distributes the award to the next of kin of each of the said three partners, "according to the laws of the State of Maryland and the statutes of this State in such cases made and provided," which decree the plaintiffs in error here claim was the right decree, and free from the error contained in the decree appealed from.

ANSWERS OF DEFENDANTS IN ERROR TO BILL OF COMPLAINT.

The answers of the defendants to that bill, who are the defendants in error contesting on this appeal, appear on pages 20 to 23 of the Record, and all such answers admit with particularity, that the firm on whose behalf the award was made, was composed of Samuel Smith and James A. Buchanan and *William B. Buchanan*, as copartners, but the next of kin of Samuel Smith averred that "the said Samuel Smith was the owner of a full one-half interest in the said firm, and the other two copartners, to wit., James A. Buchanan and William B. Buchanan, together owned the other one-half interest therein." (See Record, page 22.) These answers were, however, subsequently withdrawn, and amended answers filed by the heirs of Samuel Smith, and the claim was then made for the first time, "that the firm of Smith & Buchanan, by whom the said losses were originally sustained, consisted at the time of said losses, of two members, and no more, namely, Samuel Smith and James A. Buchanan, each of whom owned a one-half interest in said firm, that William B. Buchanan, son of James A. Buchanan, was not at that time a member of said firm, being in fact an infant of tender years, to wit., about three years of age, and that he was not admitted in the firm until long afterward, to wit., in the year 1816, etc., and respondents do not admit that the next of kin of William B. Buchanan are, as such, entitled to any share or part in said fund." (See Record, page 29.)

EVIDENCE BEFORE STATE COURT AND BEFORE COURT OF CLAIMS.

The testimony of the witnesses produced before the State Court (Record, pages 35 to 45), does little more than identify the descendants from the several members of the partnership But it is to be observed that Miss Buchanan testifies flatly to the fact that the firm of S. Smith & Buchanan, whom she represented in the Court of Claims, and in whose behalf she received the awards, consisted of her father, William B. Buchanan, her grandfather, James A. Buchanan, and Samuel Smith, and that her father survived them all. (Rec., page 36.) She filed copies

of the letters of administration granted her upon the estate of her father, William B. Buchanan, the surviving partner, and also letters granted to Col. Robert Carter Smith, the administrator *d. b. n., c. t. a.* of Samuel Smith. Robert Carter Smith, himself, the administrator *d. b. n., c. t. a.* of Samuel Smith, the ancestor from whom all the contesting defendants in error here claim as next of kin, testified before the State Court, as he also appeared and testified before the Court of Claims, where his testimony was as follows: "That he remembers his grandfather well, being about sixteen years old when he died, and that he has heard him repeatedly speak of the firm of S. Smith & Buchanan, and repeatedly say that it consisted of himself, Samuel Smith, James A. Buchanan and William B. Buchanan, the exact date when the last named became a member of the firm he does not know." He further said "that he has over and over again heard his grandfather, Samuel Smith, say that his firm of S. Smith & Buchanan, and he himself, individually, had large claims against the United States Government on account of French Spoliations." (Record, page 53.)

So also before the State Court, none of the descendants or representatives of Samuel Smith makes any statement going to show that the partners composing the firm, were any other than the three partners described by the Court of Claims, or that there was any inequality of shares between the three partners.

All the other evidence that was produced before the State Court, consisted of copies of the proceedings and evidence that were on file in the Court of Claims, or referred to therein from the open records of other Courts, when the claim of William B. Buchanan, surviving member of the firm of S. Smith & Buchanan, was filed by Esther S. Buchanan, his administratrix.

The estate and claims of Jas. A. Buchanan were then represented in the Court of Claims and before Congress by his administrator *d. b. n., c. t. a.*, George W. Brown, to whom were made, by the Court and Congress, the awards coming to his

testator. One of the counsel for Samuel Smith's next of kin, the defendants in error in this Court, with other counsel particularly designated by that interest, viz., Mr. John E. Semmes, represented Samuel Smith's interests or claims, and testified on the subject. (Record, pages 27, 49, 54, 57, 89 and 95.) And this Court is particularly requested to note the agreement between counsel on page 76 of the Record, by which it is "agreed that each and all of the afore-said instruments (being Complainants' Exhibits Examiner, etc., set out in the Record, pages 48 to 76), were filed and used in evidence in the cause of Esther S. Buchanan, administratrix of William B. Buchanan, vs. United States, late pending in the Court of Claims of the United States, and known as French Spoliations Claims Nos. 381 and 2011," because it appears plainly from certain exhibits, especially Exhibit D. D. Memorial of Jonathan Meredith and Thomas Ellicott, that the facts of the age of William B. Buchanan, and of his joining the firm formally at a later date than the period of the losses, and that the members of the firm in 1798 were Samuel Smith and James A. Buchanan, were fully known to the Court of Claims and to all the parties to the claims then before it, being the personal representatives of all three partners and the actual representatives of both plaintiffs and defendants in error to these proceedings, and to note that the Court of Claims considered and decided, notwithstanding, that the firm justly entitled to these awards, as the original sufferers of the losses, was the firm consisting of Samuel Smith and James A. Buchanan and William B. Buchanan, of which William B. Buchanan was the surviving partner.

Acts of Congress Referring Claimants to Court of Claims and Proceedings of Court of Claims, Including Finding of Facts and Conclusions of Law of Said Court.

First in order, chronologically, comes the Act of Congress of January 20, 1885, entitled "An Act to ascertain the claims of American citizens for spoliations committed by the French prior to the 31st day of July, 1801," which is the origin of the juris-

diction in this case. This Act recites: "That such citizens of the United States, or their legal representatives as have valid claims of indemnity upon the French Government arising out of illegal capture, etc., may apply by petition to the Court of Claims within two years from the passage of this Act," etc., etc.

"Sec. 2. That the Court is hereby authorized to make all needful rules and regulations, etc., etc., for executing the provisions hereof."

"Sec. 3. That the Court shall examine and determine the validity and amount of all claims included within the description above mentioned, together *with their present ownership*, and, if by assignee, the date of assignment, with the consideration paid therefor; provided, that in the course of their proceedings, they shall receive all suitable testimony on oath or affirmation, and all other proper evidence, historic and documentary, concerning the same," etc., etc., "and shall report all conclusions of fact and law as in their judgment may affect the liability of the United States therefor."

"Sec. 6. That on the first Monday of December in each year the Court shall report to Congress, for final action, the facts found by it, and its conclusions of all cases which it has disposed of and not previously reported. Such findings and report of the Court, shall be taken to be merely advisory as to the law and facts found, and shall not conclude either the claimant or Congress, etc., and nothing in this Act shall be construed as committing the United States to the payment of such claims." (See Record, pages 46, 47.)

Note here, that the findings and reports are to go to Congress, but the question arises, and is easily answered, as to whether such findings are advisory after the report has been accepted by Congress, adopted in terms, and an award made strictly in accordance therewith.

Petition of Claimant.

The petition of Esther S. Buchanan, filed in the Court of Claims, in case No. 381, in respect to ship "Jane," appears on

page 48 of the Record, and in case No. 2011, with respect to the cargo of the ship "Patapsco," on pages 55-57 of the Record. Both these petitions are signed by counsel, who appear here for the next of kin of Samuel Smith, and who then represented these defendants in error at least as much as they did the plaintiffs in error. Both of them claimed the award and the fund in the right of the administratrix of William B. Buchanan, survivor of the firm of S. Smith & Buchanan. The exhibits and testimony before referred to, were all laid before the Court of Claims, including particularly the affidavit of Robert Carter Smith, the administrator *d. b. n., c. t. a.* of Samuel Smith, above referred to, set out on pages 52 and 53 of Record, as to who constituted the firm of S. Smith & Buchanan.

FINDINGS OF COURT OF CLAIMS IN CASE 2011.

Note particularly on page 78.

IV.

"John Donnell and the firm of S. Smith & Buchanan owned jointly 41 bales of cotton shipped on said Patapsco. John Donnell was a citizen of the United States. *Samuel Smith, James A. Buchanan and William B. Buchanan, citizens of the United States, formed the said firm of S. Smith & Buchanan.* The said cotton was worth the sum of $4,100, of which said Donnell and *said* firm, each owned half."

V.

"The *said* firm of S. Smith & Buchanan and John Smith, Jr., a citizen of the United States, owned jointly, one-half by said firm and one-half by said John Smith, Jr., 70 hogsheads and 1233 sacks of coffee shipped on said Patapsco. Said coffee was worth the sum of $46,012."

X.

"November 9, 1820, *said Samuel Smith, James A. Buchanan and William B. Buchanan*, copartners, and trading as herein-

before set forth, as copartners under the firm name of S. Smith & Buchanan, assigned in trust to Thomas Ellicott and Jonathan Meredith, as trustees, all their real and personal estate belonging to them in the said copartnership capacity of S. Smith and Buchanan, etc., etc. The *claimants in their representative capacities are the owners of said claims which have never been assigned except as aforesaid.* (Record, pages 78 and 79.)

"*Conclusions of Law.*

The Court decides, as conclusions of law, etc., etc., that the claimants are entitled to the following sums from the United States:

"On the ship 'Patapsco,' William Hill, master, namely:

"George W. Brown, administrator of the estate of James A. Buchanan, deceased, - - - - - $4,609.99,
(being his share of vessel and freight.

"Robert Carter Smith, administrator *de bonis non, cum testa mento annexo* of the estate of Samuel Smith, deceased, - - - - - - - - $4,609 99,
(being his share of vessel and freight.)

"Esther S. Buchanan, administratrix of the estate of William B. Buchanan, who was the surviving partner of the firm of S. Smith & Buchanan, deceased, - - $25,056 00
(The value of the cargo (shipped) by said firm.)

"On the ship 'Jane,' John Wallace, master, namely:
Esther S. Buchanan, administratrix, representing Smith & Buchanan - - - - - - - $11,660 21

"Robert Carter Smith, administrator, representing Samuel Smith - - - - - - - - $6,738 21

Filed April 22, 1899.

By the Court."

(See Record, page 80.)

"*Conclusion of Facts in 381, Etc.*"

III.

"The cargo consisted of merchandise belonging to the firm of S. Smith & Buchanan, and to Samuel Smith individually, and one Edmund Suise. *Samuel Smith* and *Smith & Buchanan* were merchants doing business in Baltimore, etc." (See Record, page 81.)

V.

"In case No. 381, the firm of S. Smith & Buchanan were owners of one-half of the vessel, and seven-sixteenths of the cargo, etc.

"The losses of Smith and Buchanan by reason of the capture of the 'Jane' and her cargo, for which they are entitled to indemnity, are as follows, etc., etc.

Leaving amount of losses . . . $11,660.22."
(See Record, page 82.)

X.

November 9, 1820, said *Samuel Smith, James A. Buchanan,* and *William B. Buchanan,* copartners, *and trading as hereinbefore set forth as copartners under the firm name of S. Smith & Buchanan,* assigned in trust, etc., etc., all their real and personal estate belonging to them in said copartnership capacity of S. Smith & Buchanan, etc. (See Record, page 83.)

XI.

"In case No. 381, *William B. Buchanan* was the surviving partner of the firm *of S. Smith & Buchanan.* The *claimant Esther S. Buchanan has produced letters of administration for the estate of William B. Buchanan, deceased, and has otherwise proved to the satisfaction of the Court that the person of whose estate she is administratrix, was the same person who was* AN OWNER *of the 'Jane' and her cargo in 1798, and a citizen of the United States.*"
(See Record, page 83.)

"*Conclusion of Law.*"

The Court decides as conclusions of law, etc,, etc., that the claimants are entitled to the following sums from the United States.

"Esther S. Buchanan, administratrix, representating S. Smith & Buchanan - - $11,660 21
Robert Carter Smith, administrator, representing Samuel Smith - - - 6,738 21
Filed December 7, 1891. By the Court."

(See Record, pages 80 to 84.

The Court of Claims repeatedly refers to the Registers of the Ships "Jane" and "Patapsco" in the name of Samuel Smith and James A. Buchanan, to the deed of trust above mentioned made by the insolvent firm of Smith & Buchanan, to Ellicott and Meredith, and to the memorial of said trustees filed with the Commissioners of the U. S. and his Catholic Majesty, (Record, pages 61 to 73), all of which shows that the Court of Claims fully and duly considered the facts stated in those papers and the insolvent proceedings of James A. Buchanan in the Baltimore County Court affecting said firm, including the affidavit of James A. Buchanan on page 85 of Record, which were of course as open and well known to all parties in interest then as now.

The foregoing reports of the Court of Claims in the several cases, made to Congress in accordance with the terms of the Act, are each made part of the other. The Court found distinctly in each case, that Esther S. Buchanan, administratrix of William B. Buchanan, who was the surviving partner of the firm of S. Smith & Buchanan, was entitled to the awards above set out. The very words of the finding on page 78 of Record are, "*Samuel Smith, James A. Buchanan and William B. Buchanan*, citizens of the United States, *formed the said firm of S. Smith & Buchanan.*" The very words of the finding XI, on page 83 are, "that the person of whose estate she is administratrix was the same person who was an owner of the "Jane "and her cargo in 1798."

ACT OF APPROPRIATION AND FINAL CERTIFICATES OF COURT OF CLAIMS IN ACCORDANCE THEREWITH.

Up to this point the proceedings in the Court of Claims were, as the Act declares, merely advisory and for the information

of Congress, and not binding on either party. But as we shall see later, the Court of Claims in this same Buchanan case, (24 Court of Claims, 81, cited at length in Blagge vs. Balch, 162 U. S., page 455), and in the Van Wagenen case, (25 Court of Claims, 110), cited and adopted in Blagge vs. Balch, has stated that "it has required an established evidence of ownership, and has allowed only the administrator of the survivor to prosecute the claims" and "that it has reported to Congress facts which may establish an equitable ownership in an adverse party." In a word, as in the quotation in the Buchanan case, "it has done everything but place itself in the position of a Court of Probate," of which, as it says, there are thirty-eight, more or less, all governed by different statues. Therefore it was for Congress with these facts and reports before it, with the evidence of ownership, whether legal or equitable, and the advisory adjudication of the Court thereupon, to adopt such adjudication and make its gift accordingly. Congress did this in its Act of Appropriation, March 3, 1899. We quote the following portions of that Act: (See Record page 95).

"To pay the findings of the Court of Claims on the following claims, etc., etc., provided, that in all cases where the original sufferers were adjudicated bankrupts the awards shall be made on behalf of the next of kin instead of to assignees in bankruptcy, and the awards in the cases of individual claimants shall not be paid until the Court of Claims shall certify to the Secretary of the Treasury *that the personal representatives on whose behalf the award is made represent the next of kin, etc., etc.*"

"Esther S. Buchanan, administratrix of the estate of William B. Buchanan, who was the surviving partner of the firm of S. Smith & Buchanan, deceased, the value of the cargo shipped by said firm - -	$25,056.00
"On the ship 'Jane,' John Wallace, Master, viz: Esther S. Buchanan, administratrix, representing S. Smith & Buchanan - -	$11,660.21."

Observe that Robert Carter Smith, administrator of Samuel Smith gets two awards adjacent to the two given the

administratrix of S. Smith & Buchanan, and George W. Brown, administrator of James A. Buchanan, still another. So that it is plain that both the Court and Congress examined into all the rights and claims of Robert Carter Smith, representing the next of kin of Samuel Smith, but in the partnership estate gave him only such share as he had in common with the next of kin of this surviving partner. In a word, Congress said to the next of kin of Samuel Smith: "We give you your ancestor's individual award, but you can only get your ancestor's partnership award upon the terms of receiving it through the representative of the surviving partner, William B. Buchanan, and recognizing his next of kin as entitled to a partner's share."

But it should be carefully observed that Congress next and now requires a certificate or judgment from the Court of Claims, which is never advisory, but final, as is defined in the language of this Court in the case of Gilliat, 164 U. S., 42. The language in the statute is: "That the awards in the case of the individual claimants shall not be paid until the Court of Claims shall certify to the Secretary of the Treasury that the personal representatives on whose behalf the award is made, represent the next of kin, etc., etc." (See Record, page 95.)

FINAL CERTIFICATES OF COURT OF CLAIMS TO SECRETARY OF TREASURY.

The application for these certificates is noteworthy, since it shows that again one of the counsel, now as then representing the defendants in error, viz., the next of kin of Samuel Smith, appeared as counsel for the personal representatives of all three members of the firm. We copy the application in case No. 2011.

"Court of Claims, No. 2011, French Spoliation Cases.

Vessel, ship Patapsco.

Master, William Hill.

"In the matter of the application of Frank P. Clark, Esq., attorney of record for Esther S. Buchanan, administratrix of

the estate of William B. Buchanan, deceased, for a certificate of the Court under the Act of March 3, 1899.

"The defendants having been heard thereon, the Court orders that the following certificate be issued to the Secretary of the Treasury."

These certificates in the cases Nos. 381 and 2011, appear on pages 58 and 59 of Record. The certificate in the first case is as follows:

To the Secretary of the Treasury:

"The Court of Claims hereby certifies *that it appears by evidence on file in the above-entitled case* that *said* Esther S. Buchanan on whose behalf an appropriation or award was made by the Act of March 3, 1899, etc., etc., for the sum of $11,660.21, represents the next of kin of William B. Buchanan, the surviving member of the firm of Samuel Smith & Buchanan, deceased, the original owner of the claim upon which said award was made."

"And the Court further certifies that it appears on the record of said case that at the time the award of this Court was made the said claim was not held by assignment or owned by an insurance company."

In No. 2011: "The Court of Claims hereby certifies that it appears by evidence on file in the above-entitled case that *said* Esther S. Buchanan, on whose behalf an appropriation or award was made by Act of March 3, 1899, for the sum of $25,056, represents the next of kin of William B. Buchanan, surv. part., etc., deceased, the original owner of the claim upon which said award was made."

Upon these certificates the amounts of the two awards were paid by the Secretary of the Treasury to the plaintiff in error, Esther S. Buchanan, administratrix of William B. Buchanan.

After the statement of an expense account in the Orphans' Court of Baltimore City, wherein she had been appointed as such administratrix, the bill of complaint in this proceeding was filed in the Circuit Court No. 2 of Baltimore City, and the proceedings above detailed were thereupon had, and the

final decree was passed denying all right of participation in the fund, to the next of kin of William B. Buchanan, and this decree was affirmed by the Court of Appeals of Maryland, the State Court of last resort in which a decision of the matter now in issue could be had.

NOTE.—Now it is freely admitted on the part of the next of kin of William B. Buchanan that these certificates were intended to establish the fact required by the Act that the administratrix of the surviving partner represented the next of kin of the other partners as well as the next of kin of her own intestate, otherwise, according to the custom of the Court and the requirements of the Act, the shares of the other partners would not have been adjudicated to her. But whatever possible breadth of intendment can be given to this judgment and certificate of the Court, this much is clear that it was ordered to be paid to her because she represented the next of kin of William B. Buchanan, who is expressly described as an original sufferer (whatever were and whoever were the other partners), and for their benefit to the extent of his share. The said administratrix, therefore, would certainly be absolutely unfaithful to her trust, if she conceded the share of her intestate to any but his next of kin, and it does seem rudimentary to say that the next of kin of the two other partners, whose personal representatives were parties to this proceeding throughout and obtained these appropriations from Congress and these certificates or judgments from the Court that Congress authorized to give them, would be guilty of bad faith, if they attempted in any other Court or place to deny the share in the partnership to William B. Buchanan and his next of kin which they had freely alleged or allowed the Court to find or establish, and without which finding and adjudication Congress would not have given anything.

ERRORS IN THE DECREE APPEALED FROM HERE RELIED UPON.

The assignment of errors in the petition of appeal appears on pages 5, 6 and 7 of Record. They are stated as three in number, and that form of statement is hereby adopted, if this Court shall require that the errors complained of should be formally and technically stated. But the error is in fact the single and all embracing one, that, whereas Congress by its Acts referred to, and particularly by its Act approved March 3, 1899,

ratified and adopted the findings and decisions of the Court of Claims, made in pursuance of the terms of the Act of January 20, 1885, in the case of the ship "Patapsco," William Hill, Master, No. 2011, and of the ship "Jane," John Wallace, Master, No. 381, and recognized and designated William B. Buchanan as an original sufferer within the meaning of said Act of Congress, by virtue of his being a partner and the surviving partner of S. Smith & Buchanan, and gave to his personal representative the awards in question for the benefit of his next of kin, and the next of kin of his two partners, and the Court of Claims made the additional final certificate required by the said gift, or appropriation Act, of Congress, and the Secretary of the Treasury, in accordance with such certificate, paid the money to the said Esther S. Buchanan, administratrix, for the benefit of the next of kin of William B. Buchanan, to the full extent of his partnership interest in the firm, nevertheless the highest Court of the State of Maryland has denied and taken away the property and rights of the plaintiffs in error, the next of kin of said William B. Buchanan, vested in them under the aforesaid Act of Congress, in accordance with the findings and certificates of the Court of Claims made in pursuance of such Act, and has given their whole property aforesaid to the next of kin of two partners of a firm, to whom the said Court of Claims and Congress, by the terms of its Acts, had in no way given the same, or recognized, or designated, as in any way entitled to such gift. It is believed that no repetition or variation in form of this statement of the substantial error contained in the decree of the Court of Appeals of Maryland, is required in accordance with the rules of this Court, or for its easier or clearer appreciation of the error. But to enumerate, we repeat that there was error in the decree of the Court of Appeals of Maryland:

1. In deciding that it had power and jurisdiction to review the proceedings of the Court of Claims and its findings and judgments and conclusions in the matter of the two awards, and the proceedings and Acts of Congress making the appropriations in reference thereto, and to decide that the said

Court of Claims was guilty of error and mistake, and that Congress had adopted and enacted such mistake and given the fund to the wrong party or in the wrong capacity, and to decree that it should be paid to the next of kin of the members of a firm other than the firm of which the intestate of the plaintiffs in error was the surviving partner, to whose representative Congress and the Court of Claims had awarded it as aforesaid.

2. In deciding that it had the power, right or jurisdiction to correct the mistake or errors of the Court of Claims in its findings, judgments, certificates or conclusions in the matter of said awards to the plaintiffs in error, if there were any mistake, and to decree such correction.

3. In deciding that it had the power and jurisdiction to correct the mistake, error or defect, if any there were, in the Act of Congress dated March 3, 1899, and in decreeing that the appropriation paid under said Act to the plaintiff in error, Esther S. Buchanan, administratrix of William B. Buchanan, surviving partner of Smith & Buchanan, for the benefit of the next of kin of her intestate, should be paid not in any part to the next of kin of her intestate, but the whole thereof to the next of kin of the members of a firm of which her intestate was not a partner.

THE ARGUMENT.

It is hoped a very brief sketch of the argument will suffice to lay the issue, which is exclusively one of law, before the Court. Perhaps the simplest and fairest way is to commence with the decision of the Court of Appeals of Maryland, and to consider the grounds upon which the erroneous judgment, as claimed, was founded by that Court itself.

I.

THE COURT OF APPEALS OF MARYLAND HOLDS THAT, NOTWITHWITHSTANDING THE FINDINGS AND CERTIFICATES OF THE COURT OF CLAIMS AND THE TERMS OF THE LEGISLATION OF CONGRESS SO DECLARING, DEFENDANTS IN ERROR MAY SHOW IN ITS JURISDICTION THE VERY

OPPOSITE OF THE DECLARATIONS OF THE COURT AND ACT OF CONGRESS, VIZ: THAT WILLIAM B. BUCHANAN WAS NOT A PARTNER OF S. SMITH & BUCHANAN WHEN ITS PROPERTY WAS DESTROYED, AND THAT ANOTHER FIRM THAN THE FIRM OF WHICH HE WAS A MEMBER WERE THE ORIGINAL SUFFERERS AND ENTITLED TO THE AWARD.

It says the Court of Claims made and repeated a mistake, and Congress adopted and enacted that mistake in its gift to these plaintiffs in error, but that it is within its own jurisdiction to correct such mistake. It must be confessed that, if the position of the Court of Appeals of Maryland is fairly stated in above heading, it contains a great deal of novel doctrine, not only without any authority cited in support thereof, but actually contrary to the plain decisions of this Court and generally received rules of law. Let us consider if the above is a fair statement of the opinion and decision of the Maryland Court of Appeals.

That case is reported in 92 Md., page 334, and the opinion is copied in this record, pages 97 to 102. We quote as follows from page 99:

"But it is contended that the judgment and findings of the Court of Claims in connection with the Acts of Congress are conclusive, and that, therefore, all are bound by the decision of that Court, that the plaintiff was, in fact, the administratrix of William B. Buchanan, and that he was the survivor of the firm, and that, therefore, he was one of the original sufferers. We cannot, however, agree with this view. On the contrary it seems to us, from a careful inspection of the record, that the question as to whether the plaintiff was in fact the proper formal party to file the petition in the Court of Claims was never suggested to or considered by that Court."

Let us stop right here and ask this Court to look at what the Court of Claims has said on the subject of the question suggested. We quote from finding of the Court of Claims on page 83 of Record, headed "XI:"

"XI.

"In case No. 381: William B. Buchanan was the surviving partner of the firm of S. Smith & Buchanan. The claimant, Esther S. Buchanan, has produced letters of administration for the estate of William B. Buchanan, deceased, and has *otherwise proved to the satisfaction of the Court* that the person of whose estate she is administratrix was the same person who was an owner of the "Jane" and her cargo in 1798 and a citizen of the United States."

In case No. 2011, we quote from page 79, part of finding "IV" and "X" of the Court of Claims.

"IV.

"John Donnell and the firm of S. Smith & Buchanan, owned jointly 41 bales of cotton shipped on said 'Patapsco.' Samuel Smith, James A. Buchanan and William B. Buchanan formed the said firm of Smith & Buchanan."

"X.

"The claimants in their representative capacities are the owners of said claims, which have never been assigned, except as aforesaid."

One of these claimants was Esther S. Buchanan, administratrix of the surviving partner of *said* firm of S. Smith & Buchanan.

We beg the Court to consider the terms of the certificates of the Court of Claims in both cases, under Act of March 3, 1899, already quoted, and appearing on pages 58 and 59 of the Record.

We quote the opinion of the Court of Claims in Buchanan vs. U. S., 24 Ct. of Cl., page 81:

"In cases of partnerships, the Court has required evidence of survivorship, and has allowed only the administrator of the survivor to prosecute the same."

We quote again, the language of the Act July 20, 1885, requiring such finding: "The Court shall examine and deter-

mine the validity and amount of all claims included in the description above mentioned, together with their present ownership." (See Record, page 46.)

Could the Court of Appeals of Maryland be more directly opposed in this statement by the statement of the Court of Claims, whose record it had assumed power to review and correct? But we quote further from the opinion of the Court of Appeals on page 100 of Record:

"But the mistake was in assuming that her intestate was a member of *the firm* as constituted at *the time* of the losses."

That is, the Court of Appeals of Maryland states, that the Court of Claims made a mistake in this conclusion of fact and of law, and then goes on to exercise the power to correct it. Need we do more than ask: if it was a mistake, where is the jurisdiction of the Court of Appeals of Maryland to correct such a mistake? Certainly it need not be emphasized here, that except for the Act of November 20, 1885, and March 3, 1899, there was no Court in the world which had the right to establish this claim against the United States or *the ownership* as between the parties. In fact, there can be no ownership of a gratuity or gift except as it may be recognized, and in accordance with the terms of such recognition, by the Government which proposes to bestow such gratuity. Now whatever was the jurisdiction and function of the Court of law which the Government created and designated to decide these questions, in the first instance advisorily, and in the last instance finally and conclusively, was there any other Court in the wide universe, which had jurisdiction by this Act of Congress, and could any Court gain such jurisdiction except by such Act of Congress? Then, if the jurisdiction, however limited it may be, over this subject matter, was conferred by Congress upon the Court of Claims exclusively, how can any other Court, whether of a State or the United States, obtain or possess jurisdiction to review the findings, conclusions and certificates, advisory or conclusive, of the Court exercising jurisdiction under the Act of Congress? In accordance with the well-

known rule of jurisprudence, such jurisdiction could only be obtained by one Court over the other, by the method of appeal provided by a competent Legislature. If authority were needed, the authority of a case directly in point on the question of the finality of the jurisdiction of the Court of Claims in its last certificate, set out on pages 58 and 59 of Record, to be referred to later, can be used as an excellent illustration.

U. S. vs. Gilliat, 164 U. S. 46.

We cannot here help quoting from the opinion of Judge Wickes in the case of Penniman vs. Hook, et al., in the Circuit Court of Baltimore City, printed as part of this brief.

"There is no suggestion of fraud or misrepresentation in this case. If a mistake was made as alleged, it is an absolutely innocent mistake. For counsel on both sides of this case represented this defendant in the prosecution of the claim before Congress. I have not gone into the question of error in the proceedings at Washington, for assuming it all to be true, we have no power to correct it."

But we quote further from the opinion of the Court of Appeals of Maryland, in the present case:

"Nor does it appear that this mistake was discovered until after the filing of the bill in this case, when it was learned from the testimony of the plaintiff that he was an infant only three years old in 1798; and therefore could not have been a member of the firm of S. Smith & Buchanan when the losses were sustained."

We touch softly on the fact of record that the plaintiff is not a "he" but a "she," and naturally would recoil from testifying that she was an infant three years' old in 1798.

But we desire to call attention to the fact, that the defendants in error filed their answers and went to the proof of the case alleged by them, namely, that the firm entitled to the award, consisted of the three partners, Smith and the two Buchanans, father and son, but that the last-named two had a half interest between them. They failed totally to support

their contention, after proceeding with the taking the testimony, and then withdrew their former answers and filed the amended ones, in which they claimed that William B. Buchanan was not a partner at all. But does not this make unavoidable the conclusion, that these defendants in error were consistent in maintaining, before the Court of Claims by their counsel and the personal representatives of their ancestors, what they maintained in the Maryland Probate or Equity Court up to the moment of filing their amended answers, *i. e.*, that all three partners were entitled to the award as original sufferers, *for the reason that they expected to reduce the shares of the two Buchanans to one-half*, and when they failed to effect this reduction by one method, they attempted to gain it by another, absolutely inconsistent with the findings of law and fact, they had asked and obtained from the Court of Claims? In fact the Court of Appeals of Maryland, otherwhere in its opinion, twice says the findings of the Court of Claims "are due to the mistake made by the plaintiff *and those who conducted the case before the Court of Claims*," and "there is nothing to prevent the Courts of this State from correcting the mistake made by those who instituted the proceedings." Now that the proceedings in the Court of Claims were with the consent and participation of the representatives of the three partners, is thus expressly recognized by the Court of Appeals, and has been shown with particularity. But the defendants in error, both in their answers and amended answers, expressly admitted the allegations of Clause Third of the plaintiff's bill, that "in pursuance of said Act of Congress, and *as administratrix of said William B. Buchanan*, the last surviving member of said firm of S. Smith & Buchanan, your oratrix did present and urge before said Court of Claims, *on behalf of said firm*," and "Congress did award to your oratrix" the claims. "The said firm" is always and ever described in the bill as consisting of the three partners. That is the defendants in error admitted, and the Court of Appeals of Maryland found, that they consented that these claims should be presented and urged *on behalf of that firm and none other.* Now that Congress has

given the award to *that firm*, strictly in accordance with their prayer, claim and consent, they ask the jurisdiction of the Maryland Court to take it from that firm, and grant it to another, on the ground that they made a mistake, which they newly discovered pending proceedings in the Maryland Court.

We will show later what was the probable view of the Court of Claims of the effect of the evidence, which determined it to treat William B. Buchanan as entitled to a partner's interest in these losses and to be regarded as one of the original sufferers. But we are now pointing out the inaccuracy of the Maryland Court of Appeals, when it seems to infer, that the Court of Claims did not have access to the same evidence that itself had. We have mentioned, that the Court of Claims examined and referred in its Findings to the registers of the ships "Jane" and "Patapsco," as being in the names of Samuel Smith and James A. Buchanan only, set out on pages 61 and 63 of the Record. It also referred in its Findings to the Memorial of Ellicott and Meredith, Trustees of Samuel Smith, James A. Buchanan and William B. Buchanan, which alleges the ownership of these claims as in those partners, trading as the firm of S. Smith & Buchanan, but says "that they are credibly informed and do verily believe that the said Samuel Smith and James A. Buchanan composed the *then* mercantile firm of S. Smith & Buchanan, and are citizens of the United States of America, domiciliated at and prior to the year 1798 in the City of Baltimore." (See Record, page 71.) But the said trustees expressly allege, that the property in these claims is in the firm first named, of which William B. Buchanan was a member.

We have shown that Robert Carter Smith, the administrator *d. b. n., c. t. a.* of the testator of the defendants in error, appeared before that Court and made his own particular affidavit (See Record, page 53), that notwithstanding that he does not know the exact date when the last named became a member of the firm, that the firm of S. Smith & Buchanan, the owners of these claims, consisted of Samuel Smith, James A. Buchanan and William B. Buchanan. The representative of these defendants in error, therefore, knowingly waived all question as to

the date when William B. Buchanan joined the firm, and in effect assented that the Court should find the ownership of these claims to be in his firm, and that William B. Buchanan should be given his interest as one of the partners, and his administratrix receive the money to distribute his share of it to his next of kin.

The deposition of James A. Buchanan made before the insolvent Court of Baltimore County in 1821, it is believed, was before the Court of Claims, but it was always known to and within reach of the defendants in error here and the parties to the proceedings in the Court of Claims. (See Record, page 85.) That deposition states that this firm of S. Smith & Buchanan, consisting of the three partners found to be such by the Court of Claims, possessed "these claims on Holland, France and Naples," amounting to $723,850.00. The claims are mentioned again as the property of this firm at the foot of Statement A, (page 87 of Record), as "claims on the French, Dutch and Neapolitan Governments." But in his answer to the 19th question this deponent further stated: "At the commencement of the year 1818 the house of S. Smith & Buchanan was unquestionably solvent, and a conclusive evidence that such was my sincere and undissembled belief, is to be found in this fact, viz: That my son William who enjoyed a competent independent estate of his own, was, on the first day of that year, taken into the house of S. Smith & Buchanan."

He states further, as the Court of Claims found, that after the suspension of S. Smith & Buchanan in the month of May, 1819, it made an assignment of all its effects to Ellicott and Meredith, trustees, which assignment was presented to the Court of Claims and referred to by them, and appears on page 65 of Record, and again treats these claims as the property of the firm of S. Smith & Buchanan, consisting of Samuel Smith, James A. Buchanan and William B. Buchanan. (See 17th Answer of James A. Buchanan, Record, page 87.)

II.

IT IS THEREFORE REASONABLY, IF NOT ABSOLUTELY CERTAIN, THAT THE COURT OF CLAIMS ACCEPTED THE THEORY ASSENTED TO BY THE PERSONAL REPRESENTATIVE OF THE DEFENDANTS IN ERROR, VIZ., THAT IT WAS MERELY EQUITABLE AND JUST, THAT WILLIAM B. BUCHANAN SHOULD BE TREATED AS ONE OF THE ORIGINAL SUFFERERS WHO HAD SHARED THESE LOSSES, BECAUSE OF THE FACT THAT ON HIS ADMISSION INTO THE FIRM, HE WAS SO REGARDED BY THE OTHER PARTNERS, AND LATER BY THEIR ASSIGNEES IN INSOLVENCY, FOR THE REASON THAT HE CONTRIBUTED HIS INDEPENDENT FORTUNE TO THE FIRM AGAINST THE ASSETS OF THE OTHER PARTNERS, INCLUDING THESE CLAIMS, AND BOTH THESE OTHER PARTNERS AND THE CREDITORS GOT THE FULL BENEFIT OF THAT SACRIFICE, HENCE THAT IT WAS MERE EQUITY TO CONCEDE HIM TO BE IN THE POSITION OF AN ORIGINAL OWNER AND SUFFERER.

It is not necessary to argue here whether this was the correct view of the case, but if it appears probable or possible that the Court took this view, and Congress accepted it, and made the gift to William B. Buchanan in accordance with the Court's theory and conclusions, no other Court, whether the Court of Appeals of Maryland, or this, the highest Court of the land, has any power to correct any error in it. We know for certain that the Court did an exactly similar thing in another case, where it considered that another than the original owner was equitably substituted in the place of the original owner, and that this did not constitute such an assignment as that which the Act of Congress required it to so certify against. It did exactly this in the case of—

Adams, Admr. of Brooks, vs. U. S., 26 Ct. Cl., page 225.

Brooks was an insurance broker who effected insurance with various individual underwriters in his office. But though not a party to these underwritings, he paid the losses and looked to the several underwriters to reimburse him, and took assignments from them some time after these payments. We quote from page 252 of the Court's opinion:

"Mr. Brooks was thus an original loser, and cannot be classed among those who are supposed to have been assignees by purchase for purposes of speculation, if such there be.

"The history of the transaction gave him the right to indemnity as an original loser subrogated to the rights of others, whose obligations he took upon himself."

For the full history of this claim, see—

Cushing et al. vs. U. S., 22 Ct. Cl. 3 and 4.

Therefore, if the Court is to give any effect as evidence to the facts stated in the affidavit of James A. Buchanan, and in the deed of assignment from the firm of S. Smith & Buchanan, to its insolvent trustees, and in the memorial of those trustees, it is bound to accept the effect of what all these persons claimed, viz., that although William B. Buchanan did not enter the firm until after these losses, he entered it under such circumstances, that all the partners of the firm and even the creditors of the firm recognized that he was equitably entitled to the full share of a partner in these claims, inasmuch as he had lost his whole fortune by mingling it with the assets of the firm, and the creditors and other partners had benefited by it. The Court of Claims found, just as in the case of Mr. Brooks, that he was not a purchaser of these claims by speculative assignment, in which case it would have been their duty to exclude him under the terms of the Act, and they expressly certified that he was no such forbidden assignee, but that he was an equitable owner in these claims by estoppel of all parties. It was competent for the Court to make such a decision, if Congress chose to accept it, and it did make such a decision. It has explained the terms upon which it could make such a decision in the Adams case just above quoted. We make one further quotation from its decisions showing that it distinctly recognized such a ground, as the one above suggested, as a proper ground:

"The record title to a vessel is not conclusive in these cases." "The Court may report to Congress facts which may establish an equitable ownership in an adverse party."

Van Wagenen vs. U. S., 25 Ct. Cl., page 110.

In the case before us it found facts which established an equitable ownership in William B. Buchanan, and that his firm, of which he was the surviving partner, and no other, was the owner of the claims in question.

III.

THE COURT OF APPEALS OF MARYLAND FURTHER HOLDS THAT IT IS IN ITS POWER TO CORRECT THE ACT OF CONGRESS WHICH, IN TERMS, AWARDED HIS SHARES AS ONE OF THE PARTNERS IN SAID FIRM, TO THE ADMINISTRATRIX OF WILLIAM B. BUCHANAN, FOR THE BENEFIT OF HIS NEXT OF KIN, BECAUSE, FORSOOTH, SUCH ACT INCORPORATED AND ENACTED A MISTAKE, WHICH, IT SAYS, WAS THE MISTAKE OF THE PARTIES TO THE PROCEEDINGS IN THE COURT OF CLAIMS.

We say again, that nothing but quotations from the opinion of the Court of Appeals could justify us in stating the above to be the position of that Court. Therefore we quote:

"We conclude, therefore, that there is nothing in the finding or certificate of the Court of Claims or in the legislation of Congress which estops the defendants from showing who were the original sufferers, nor from showing that in point of fact William B. Buchanan was not a partner of the firm of S. Smith & Buchanan in 1798, when its property was destroyed and the loss incurred." (Record, page 101.)

And further: "If however, as we hold, the defendants are not estopped by the findings or certificates of the Court of Claims, and if, as we have also held, there is nothing in the Acts of Congress which would prevent the Courts of this State from now correcting the mistake made by those who instituted the proceedings, can there be any doubt that when the plaintiff has come into a Court of Equity asking that the fund may be distributed to those entitled, that the distribution will be made to the real beneficiaries, viz., the next of kin of Samuel Smith and James A. Buchanan?" (Record, pages 101, 102.)

It would seem hardly possible that the Court of Appeals should have failed to perceive its error, if it had added to the words just quoted, "and not any part thereof to the next of kin of William B. Buchanan," to whom Congress expressly

awarded it. But it is only fair to the Court to quote its final words on that subject in the opinion on the second appeal to that Court. (See Record, page 117.)

"In the case here Congress made an appropriation for the benefit of a class, and it was paid over to a trustee whose duty it was to ascertain who were the members of that class within the meaning of the Act of Appropriation. The jurisdiction of our Courts to determine the question as to who are entitled to share in the appropriation grew out of this duty imposed upon the Trustee."

It seems strange that the Maryland Court with this definition of its jurisdiction before it, should have failed to see the limits. It is true, in a sense, that Congress made this appropriation, in the language of the opinion above quoted, for the benefit of "a class." But it made it to a named and ascertained personal representative of a named and ascertained man, for the benefit of an ascertained, designated class, viz., the next of kin of that man, to the extent of his full share as a partner in the firm, to which firm the Act made reference, as it also did to the findings of the Court of Claims, to the effect that the firm consisted of this named and ascertained party, and two other named and ascertained persons. Therefore, the personal representative was trustee, if you so choose to denominate her, for the class whom Congress expressly designated, and, as in the case before quoted, the jurisdiction of the Courts in Maryland was merely to ascertain who were the members of the class whom Congress designated as the recipients of that bounty, and not to determine whether Congress had rightly designated the class or persons to receive its bounty, and to take its bounty altogether from the class designated by Congress and to give it to another class. It is very certain that the person designated by the Court of Claims and the Act of Congress as the administratrix of William B. Buchanan, and the class designated as the next of kin of William B. Buchanan, are not the same as the person designated as the administrator of Samuel Smith and the class designated as the next of kin of Samuel Smith, or the person designated as the administrator

of James A. Buchanan, and the class designated as the next of kin of James A. Buchanan. Therefore, when the Maryland Court of Appeals recognizes that under the cases of Louisville vs. U. S., 169 U. S., and U. S. vs. Jordan, 113 U. S., if a specific appropriation had been made by Act of Congress to a named or ascertained person, or a named and ascertained class, it would be out of their power to divert it to another person and another class, it is strange that they do not recognize, that the person and class are both specifically designated in this Act of Congress, and that they have taken away the fund appropriated altogether from that person and class, and given it to another person or class. They seem to be confused by the fact that the plaintiffs in error here, recognize their duty to share the fund in question with the other partners of the firm designated and described by the Act of Congress and Court of Claims, for the very reason, however, that the designation of William B. Buchanan, as the surviving partner of a firm, necessarily made his administratrix trustee for the other partners and their respective next of kin. But, unless William B. Buchanan were the surviving partner of a firm, of course, his administratrix could not be trustee for the representatives and next of kin of the other partners, or of any one else except her own intestate. Consequently, it is certainly logical to say, that, if William B. Buchanan is decided by the Maryland Court of Appeals not to be a partner with James Buchanan and Samuel Smith, then his administratrix has no relation to those persons and their next of kin at all; but being admittedly the person named in the Act, she must hold the money exclusively for the next of kin of her intestate named and ascertained by the Act, and not for the next of kin of any other person, whom the Court of Appeals of Maryland may decide to flock by themselves exclusively as partners, and to have suffered their own losses in which William B. Buchanan had no share. But it is precisely and only, because her intestate is described as partner with these other members of the firm, that any trust whatever exists for the benefit of the next of kin of the other members of the firm, and consequently the idea

of trusteeship cannot be dissociated from the conception that she is trustee for all the three interests. Certainly she can have no relation of trustee at all to the persons or their descendants who were not members of the firm of which her intestate was a partner and the surviving partner.

IV.

WHEN THE COURT OF APPEALS OF MARYLAND, THEREFORE, CLAIMED THE RIGHT TO CORRECT THE MISTAKE MADE BY CONGRESS AND THE COURT OF CLAIMS IN FAVOR OF THE NEXT OF KIN OF WILLIAM B. BUCHANAN, BY WHOMSOEVER AND HOWSOEVER INDUCED, IT CERTAINLY ANNOUNCED A RULE OF LAW QUITE OPPOSITE TO THE RULE ON THAT SUBJECT SO OFTEN ENUNCIATED BY THIS TRIBUNAL.

A few quotations will save extended argument. We commence with U. S. vs. Price:

"The Acts now under consideration required the Secretary of the Treasury to pay Price the money he got. It was, when the payment was made, and is *now*, the law of the land that he was entitled to that sum from the United States on account of his claim. The Secretary of the Treasury could not refuse to pay it and no authority has been given any one to sue to recover it back. *It may be that Congress required the payment to be made under mistake or that the claim was not a just one.* But until Congress abrogates the law and directs suit to be brought to recover back the money, the conclusive presumption is that there was no mistake, and that Price is under no obligation to pay back what he has received."

U. S. vs. Bem Price, 116 U. S., page 45.

We quote again: "Where Congress have, by confirming the reports of Commissioners or other tribunals, sanctioned the rules and principles on which they were founded, it is a legislative affirmance of the construction put by these tribunals on the laws conferring the authority and prescribing the rules by which it should be exercised, or which is to all intents and purposes of the same effect in law. It is a legislative ratification

of an Act done without previous authority, and this subsequent recognition and adoption is of the same force, as if done by pre-existing power, and relates back to the act done."

U. S. vs. Arredondo, 6 Peters, page 713.

The recent case of U. S. vs. Jordan has been already alluded to. Congress passed an Act making appropriations to refund to certain citizens of Tennessee, named in the Act, the amounts of certain taxes unlawfully collected between certain dates. The Treasury undertook to scrutinize anew the claim of Jordan, on the theory that collections had not been made of him at the dates which made them unlawful. Jordan brought suit for his appropriation in the Court of Claims and recovered judgment from which the Government appealed. Mr. Justice Blatchford, speaking for this Court, said:

"The Court of Claims held that the statute did not admit of that interpretation, nor leave open any question for the Court or for the accounting officers of the Treasury, except the identity of the persons named in it, and that its language, taken together, was too clear to admit of doubt; that Congress undertook, as it had the right to do, to determine not only what particular citizens of Tennessee by name should have relief, but also the exact amount which should be paid to each one of them. We concur in this view."

Did not Congress, in language too clear to admit of doubt, determine the exact amount which should be paid the administratrix of William B. Buchanan, by name, for the benefit of his next of kin, to the full amount of his share as a partner?

U. S. vs. Jordan, 113 U. S., page 422.

An almost identical case with the latter and this present case is the case of—

U. S. vs. Louisville, 169 U. S., 249.
31 Ct. of Cl.

In that case, said Mr. Justice Peckham, speaking for the Court:

"*The Act of 1891 was in the nature of a judgment, final in its character, and subject to no appeal,* and the duties of the officers of the Government, thereafter charged with the payment of the money appropriated by that Act, were not discretionary and were limited to the clerical functions of making payment, as directed by the Act."

See also—Brown vs. Jackson, 7 Wheat. 218–241.

V.

THE CIRCUIT COURT OF BALTIMORE CITY RECOGNIZED CLEARLY THAT THE COURT OF CLAIMS AND CONGRESS MADE THE AWARD TO THE FIRM OF WHICH WM. B. BUCHANAN WAS A PARTNER, AND NOT TO A FIRM IN WHICH HE WAS NO PARTNER, AND THAT THIS COMBINED ACTION WAS A JUDGMENT, WHICH IT HAD NO POWER TO DISTURB.

No better statement of the result of the combined action of the Court of Claims and Congress can be made than is contained in the opinion of Judge Stockbridge of the Supreme Bench of Baltimore City, in deciding this case below, and which is printed with this brief. We quote as follows:

"The money in question is a mere gratuity, nothing more and nothing less: it is true that the findings of the Court of Claims were not a judgment in the sense that the action of that Court is, when passing upon cases, under a jurisdiction differently conferred, and it is perfectly true also that Congress might, or might not, as it saw fit, have accepted the findings of that Court, and by an appropriation provided the necessary money to pay the same, or it might have accepted in part or rejected in part. In order to confer jurisdiction for the entry of a judgment two things are necessary—action by a legislative body, which confers the jurisdiction, and an action of a judicial body in conformity with the jurisdiction conferred. What happened in this case was the jurisdiction conferred to investigate and report; the investigation and report made by the judicial body and then the action of the legislative body making the necessary appropriation to satisfy the findings. While the order is inverted from that which usually obtains, I do not see

how it can be successfully argued that when both the legislative and judicial bodies have acted, each within its appropriate sphere, that the net result of that action is anything less than a judgment. It would have been entirely competent by the joint action of Congress and the Court of Claims to have made an award and appropriation to Mr. George W. Brown, as administrator of James A. Buchanan, the surviving member of one firm of S. Smith & Buchanan, of such amount as it saw fit, or to have awarded the same or a different amount to the complainant as administratrix of the estate of William B. Buchanan, as surviving member of his firm, or to anybody else, etc. But when Congress and the Court of Claims had acted and made the selection of the object for the nation's bounty, it does not seem to me within the purview of a State Court to inquire into, or to divert to a different channel, the gratuity so bestowed. In the most favorable light that the case can be put for the defendant, the Court of Claims was mistaken in the matter of the identity of the two firms of S. Smith & Buchanan, and if the case be one of mistaken identity, it then comes directly under the ruling already previously made in the case of Penniman vs. Hook, in the Circuit Court, and the result would be the same."

We have already quoted from the opinion in the case of Penniman vs. Hook, by Judge Wickes of the Supreme Bench of Baltimore City, printed with this brief as part hereof, and again request comparison with the opinion of the Court of Appeals of our State. In that case an appropriation had been made by the Act of March 3, 1901, on behalf of the next of kin of one Beale Owings, in payment of a French Spoliation Award. The money was collected in the method provided by the Act, by Mrs. Penniman, the administratrix of Beale Owings; she having filed the petitions and conducted the proceedings to fruition. After she had collected the fund and was about to distribute it, the next of kin of another Beale Owings, represented by Hook, claimed the fund, alleging that *their* Beale Owings was the person who had, in fact, been the sufferer of the loss, and hence the fund must be distributed among them, and not among the next of kin of that Beale

Owings to whose administratrix it had been paid. Judge Wickes held that the administratrix had been mentioned by name in the Act, and it did not matter whether her intestate Beale Owings had altogether escaped suffering while the other Beale Owings who lived about that time, suffered greatly. Congress made the gift to the administratrix it named, not to another it did not name.

We quote further from that opinion, which commences with a portion of Mr. Justice Peckham's opinion in the case of—

U. S. vs. Gilliat, 164 U. S., page 42:

"'We think Congress intended, that when such fact had been ascertained by the Court of Claims upon evidence sufficient to satisfy that Court, the fact was to be certified by the Court to the Secretary of the Treasury, and such certificate was to be final and conclusive.'

"So that, whether as in Van Wagenen's case, Congress is to decide the question arising upon facts reported by the Court of Claims, answering questions of conflicting claimants, or sees proper to delegate the power to the Court of Claims, as in the Gilliat case, the result is, that the decision arrived at is 'final and conclusive,' from which no appeal lies, and into the correctness of which no State Court has jurisdiction to inquire. There is no suggestion of fraud or misrepresentation in this case. If a mistake was made, as is alleged, it was an absolutely innocent mistake, for counsel on both sides of this case represented Mrs. Penniman in the prosecution of the claim before Congress. I have not gone into the question of error in the proceeding at Washington, for assuming it all to be true, we have no power to correct it."

(See Appendix.)

Penniman vs. Hook, Circuit Court No 2, Baltimore City.

VI.

THE COURT OF APPEALS OF MARYLAND DECIDED, THAT THERE WERE TWO FIRMS OF SMITH AND BUCHANAN, ONE CONSISTING OF SAMUEL SMITH AND JAMES A. BUCHANAN, AND THE OTHER CONSISTING OF SAMUEL SMITH, JAMES A. BUCHANAN AND WILLIAM B. BUCHANAN, AND THAT THE COURT OF CLAIMS AND CONGRESS BY MISTAKE AWARDED THE FUND IN QUESTION TO THE ADMINISTRATRIX OF THE SURVIVING PARTNER OF THE LAST NAMED FIRM, WHEREAS ITSELF WILL CORRECT THAT MISTAKE AND AWARD IT EXCLUSIVELY TO THE NEXT OF KIN OF THE FIRST NAMED FIRM. WHENCE COMES ITS POWER AND JURISDICTION TO DO THIS?

This is the whole question, and we merely restate it for the purpose of making plain that both the lower Court and the Court of Appeals agreed that the question was the same and that each took opposite sides upon it. We have already quoted the Court of Appeals of Maryland, as follows:

"Indeed, it seems to have been conceded on all hands, and properly so, that she (the administratrix of William B. Buchanan) was the representative of the surviving member of a firm. *But the mistake was* in assuming that her intestate was a member of *the firm* as constituted at *the time* of the losses."

The Court of Appeals then went on to determine for itself that this was a mistake, and that the firm as constituted at the time of the losses and who actually suffered the loss in question, was a different one from the one to which the Court of Claims and Congress made the award. But, as Judge Stockbridge pointed out in the lower Court, they did make the award to the firm of which the plaintiff's intestate was the surviving partner and a member, and in order to have made the award to the firm which the Court of Appeals thought was the right firm, they would have had to make it to George W. Brown, administrator of James A. Buchanan, the surviving partner of the firm that the Court of Appeals thought ought to have received it. As Judge Stockbridge says, George W. Brown, the administrator of the estate of James A. Buchanan, at the time of the prosecution of the claim in the Court of

Claims, appeared in that case by the same counsel who appear here in part for the heirs of Samuel Smith, and received an award in his individual right, and if the Court had decided, upon the evidence before it, that the firm of which his testator and Samuel Smith were the only members, was entitled to the award here in question, he would necessarily have received it, as the administrator of the surviving partner of that firm, instead of its being given to Esther S. Buchanan, the administratrix of the surviving partner of the firm on whose behalf the award was made.

It should be remembered that Miss Esther S. Buchanan appeared for the first time in the proceedings in the Circuit Court of Baltimore City, in the capacity of administratrix *d. b. n., c. t. a.* of James A. Buchanan, after the death of George W. Brown, the former administrator to whom the Court of Claims and Congress made the awards as before mentioned of all that they considered due to that testator. Let us suppose that George W. Brown had been alive at the date of the proceedings in the State Court: Would it have been possible for him to have filed a bill in equity or a cross-bill, claiming for the firm of which his testator was the surving partner, *a gift*, made by Congress to a different person, viz., the firm of which William B. Buchanan was the surviving member?

We have shown, as we believe, that the Court of Claims and Congress adopting its decision, made the award of this fund to one firm rather than the other, for the best of reasons, namely, because they considered that the members of the former firm, and all claiming under them, were estopped from denying that William B. Buchanan had become a member of the firm owning this claim, under such circumstances that his firm might be deemed to have the original ownership of it, and the members of the other firm were estopped from denying the rightfulness of this decision, and that the personal representatives of the members of the other firm, and their counsel, had assented to this view, or this decision, by participating without objection, at least, in the action of the Court, and still later in the action of Congress. For, of course, it is plain

that at any time before the Act of Congress making this appropriation had been passed, it was competent for these claimants, the defendants in error here, to have moved either, or both, the Court of Claims or Congress to make the award to the other firm, if they had then deemed the ownership rightfully there. But they did not do so, and, when the Act of Appropriation became final and the final certificate of the Court of Claims was issued in accordance with that Act, it became too late for these claimants to take away the gift from the parties to whom it was thus given. The designation of the firm entitled to receive it, is not doubted by the Court of Appeals of Maryland, and, if a certain firm was thus sufficiently designated, the award from that date must belong to the next of kin of all the partners of that firm, and there was but one duty left to the probate Court of Maryland, namely, to ascertain who were the next of kin of all three members of that firm, and distribute among them, respectively, the share of each partner.

VII.

THE COURT OF APPEALS OF MARYLAND, HOWEVER, ITSELF ADMITTED THAT THE PROPER TRIBUNAL TO CORRECT THE MISTAKE, IF THERE WAS A MISTAKE, WAS THE COURT OF CLAIMS, PRIOR TO THE FINAL ACTION OF CONGRESS UPON ITS AWARD, AND, IF THAT BE SO, WHAT OTHER TRIBUNAL IS APPOINTED BY LAW TO CORRECT THE ERRORS OR MISTAKES OF THE COURT OF CLAIMS IN THE EXERCISE OF ITS JURISDICTION ON THIS SUBJECT?

It seems strange that the Court of Appeals should have fallen into the error in question, when we consider the following portion of its opinion:

"If the mistake had been called to the attention of the Court of Claims, the proceedings would undoubtedly have been amended, or as in the case of the Clio, 27 Ct. Cl. 221, that Court would have said that, inasmuch as it appeared that the administratrix in fact represented the descendants and next of kin of the original claimants, and that she was prosecuting the claim with their knowledge and at their request, the tech-

nical error of taking out letters of administration on the estate of a subsequent member of the firm, that is, of one who was not a member of the firm when the loss was sustained, 'will not preclude the Court from rendering a decision upon the merits and reporting the case to Congress.' "

But this Court will not surely forget that, if a motion for such amendment, as is suggested, had been made by the representative of the other firm now claiming this award, the representative of the firm that now has received the award, under the action of the Court of Claims and Congress, would have had an opportunity to resist and make defense against such action, and at a period fifteen years nearer the origin of the action than now and when there were still persons living who could have assisted this plaintiff in error in the defense of the rights of her intestate and the rights of his next of kin. This is simple justice, and well illustrates the reason of the rule which prevents the action of the Court of Claims, within its jurisdiction, and the action of Congress, from being collaterally questioned and reviewed after such action has become final and the equivalent of a judgment or, "of the law of the land," to quote the language of the Supreme Court in U. S. vs. Bem Price, before referred to.

See—U. S. vs Arredondo, 6 Pet. 729.
Comstock vs. Crawford, 3 Wall. 403.
Grignon vs. Astor, 2 How. 341.

VIII.

NOT ONLY IS THE ACTION OF CONGRESS, IN MAKING THESE APPROPRIATIONS, FINAL AND CONCLUSIVE, BECAUSE IT IS IN THE NATURE OF A JUDGMENT, OR AN ACT OF JUDGMENT, BUT IT HAS BEEN EXPRESSLY DECIDED BY THIS COURT THAT IT IS PURELY AN ACT OF GRACE OR A GRATUITY, AND FROM THE NATURE OF SUCH AN ACT NO ONE HAS ANY PROPERTY RIGHTS IN THE SUBJECT OF ITS BOUNTY, WHICH HE CAN ASSERT, IN ANY COURT IN EXISTENCE, AGAINST THE DESIGNATED RECIPIENTS OF THAT BOUNTY OR IN ANY WAY CONTRARY TO THE TERMS OF THE ACT MAKING THE GIFT.

As to the nature of these appropriations, the Court has decided, that—

"By the Act of March 3, 1891, payment was only to be made according to the proviso. We think that the payments thus prescribed to be made were purposely brought within the category of payments by way of gratuity, payments as of grace and not of right."

See—Blagge vs. Balch, 162 U. S. page 457.

And it is a rule, inherent in the very nature of a gift, that no one should be heard to contend, that there existed an obligation from the donor to the donee, which one who has claims against the donee, either as a creditor or to be substituted in his place, can assert in any Court, or which are transmissible by law or by the aid of a Court from the designated donee to such claimant. The rule is, of course, as old as the idea or notion of a gift. *Cujus est dare ejus est disponere.*

Broom's Legal Maxims (5th Ed. 1870), page 459.

Therefore, when Congress said to the next of kin of Samuel Smith and James A. Buchanan, you may take the share in the fund of your respective ancestors, but you must take it, and share it, with the next of kin of William B. Buchanan, whom the Court has found, and we have designated, to be the survivor of the firm entitled to take it, then these defendants in error could not take it on any other terms, and certainly could not take it on the terms of excluding the descendants of William B. Buchanan from their ancestor's share, thus recognized and given them by Congress.

This principle was announced in the very ancient and much revered case of the full day's laborers in the vineyard against the eleventh hour laborers. Said the donor in that case: "So far as my gift to the eleventh hour laborers was a gratuity, you cannot complain, for as far as my obligation to you went, you have been paid in full, and beyond that, the rest was a gratuity." "Shall I not do what I will with mine own? Is thine eye evil because I am good?" (See Matthew, ch. xx, v. 15.)

There is one element of the gift which has been recognized in the case quoted above, that was first announced in a still more ancient case, namely, that of Jacob vs. Esau, viz., that a gift once made is final, and, even if obtained by fraud, cannot be resumed by any one alleging the fraud on the donor, but only by the donor himself, who even then must bear this rule of logic and justice in his mind, that if it were a gift pure and simple, even a certain sort of fraud does not always justify the donor in resuming it. For in so doing, he must become conscious that he is making doubtful the purity of his gift, that there was a consideration for it, namely, the charm of the fraud itself. We quote from the judgment of Isaac, when the claim was suggested in behalf of Esau, that he should withdraw that dearest of gifts, the blessing that accompanied it, which he bestowed upon Jacob. These are his words:

"I have blessed him and he shall be blessed."

Genesis, ch. xxvii, v. 33.

Apparently Esau had a better notion of the true remedy than our opponents here, when he said: "Hast thou not reserved a blessing for me; hast thou but one blessing my Father?" It would seem that the proper action under the theory of our opponents, that there was a mistake, would be to allow Congress to resume its gift and make the award over again, which we have offered to do.

We have quoted the language of this Court in U. S. vs. Bem Price above, and we quote also the following:

"In England, a bill in equity lies to set aside letters patent obtained from the King by fraud (Attorney-General vs. Vernon, 1 Vern. 277-370; the same case, 2d Ch. Rep. 553), and it would in the United States, *but it is a question exclusively between the sovereignty making the grant and the grantee.*"

Field vs. Seabury, 19 How., page 333.

See also—Nebraska vs. Lockwood, 3 Wall, page 240,, where the above case is approved and applied and the doctrine re-announced.

IX.

THE DEFENDANTS IN ERROR RELY UPON THE CASE OF WILLIAMS VS. HEARD, 140 U. S., KNOWN AS THE CASE OF THE ALABAMA CLAIMS, AS SHOWING THAT A STATE COURT MAY HAVE JURISDICTION TO DETERMINE WHO SHALL BE THE ULTIMATE RECIPIENTS OF THE BOUNTY OF CONGRESS, NOTWITHSTANDING THAT THIS COURT HAS SAID PLAINLY THAT THE ALABAMA CLAIMS, THE SUBJECT OF THAT CASE, DIFFERED FROM THE FRENCH SPOLIATION CLAIMS, THE SUBJECT OF THIS CASE, INASMUCH AS THEY WERE CASES OF APPROPRIATIONS MADE IN SATISFACTION OF OBLIGATIONS AGAINST THE GOVERNMENT, MORAL, OR QUASI LEGAL, OR OF CERTAIN RIGHTS TO SHARE IN THE POSSESSION OF A FUND OF WHICH THE GOVERNMENT WAS TRUSTEE, WHICH CLAIMS OR APPROPRIATIONS WERE DESCENDIBLE AND TRANSMISSIBLE BY LAW TO THE HEIRS OR CREDITORS OF A CLAIMANT, WHEREAS THESE, BEING PURE GRATUITIES, COULD NOT GO TO ANY OTHER RECIPIENTS THAN THOSE PLAINLY DESIGNATED IN THE ACT.

We need only quote from the case of Blagge vs. Balch, 162 U. S., commencing on page 459:

"Manifestly the claims involved in these cases do not come within the rule laid down in Comegys vs. Vasse, 26 U. S., and Wiliams vs. Heard, 140 U. S., and, without intimating any opinion on their merits, the legislation seems to us plainly to place them within that applied in Emerson vs. Hall, 38 U. S., (13th Pet. 409), though the circumstances are not the same."

Says the Court in that case, also (on page 458):

"In Comegys vs. Vasse, 26 U. S., 1st Pet., 193, the United States had stipulated with Spain that they would assume and pay certain claims of their citizens against Spain, and an award was made in favor of Vasse, one of the claimants, by a commission appointed as stipulated to examine and adjudicate the claims. Vasse had in the meantime become bankrupt, and the assignment in bankruptcy was held to carry the claim with it.

"In Williams vs. Heard, 140 U. S., 529, Comegys vs. Vasse, *supra*, was followed, and applied to the awards of the Alabama Claims Commission. The United States had demanded and

received indemnity for losses sustained by their citizens, and had recognized as valid the class of claims to which the particular claim belonged, and had created a Court to adjudicate thereon. It was held that the claim passed to the assignee in bankruptcy, and that payment of awards so made could not be regarded as a mere gratuity.

"In Emerson vs. Hall, 38 U. S., 13th Pet. 409, Chew, the collector, Emerson, the surveyor, and Lorraine, the naval officer, of the port of New Orleans, prosecuted a vessel to condemnation for violation of the laws of the United States prohibiting the slave trade. * * * March 3, 1831 (6 Stat. at L. 464) Congress passed an Act "for the relief of Beverly Chew, the heirs of William Emerson, deceased, and the heirs of Edwin Lorraine, deceased," which directed the portion of the proceeds claimed to be paid over to Chew, "and the legal representatives of the said William Emerson and Edward Lorraine, respectively," and under authority of which the sums which had been adjudged to these officers were paid to them as provided. One of the creditors of Emerson claimed the sum so paid to his legal representatives as assets for the payment of his debts, but it was held that the payment to the heirs was rightfully made, and that the sum could not be considered in their hands as assets for the payment of the debts of their father. Mr. Justice McLean delivering the opinion of the Court said: "A claim having no foundation in law, but depending entirely on the generosity of the government, constitutes no basis for the action of any legal principle. It cannot be assigned. It does not go to the administrator as assets. It does not descend to the heir. And if the government from motives of public policy, or any other considerations, shall think proper, under such circumstances, to make a grant of money to the heirs of the claimant, they receive it as a gift or pure donation. A donation made, it is true, in reference to some meritorious act of their ancestor, but which did not constitute a matter of right against the government."

See—Blagge vs. Balch, 162 U. S. 459.
Emerson vs. Hall, 13 Pet. 413.
Forsythe vs. Reynolds, 15 How. 358.

Could there be any better summation of this rule in applying it to this case here, than in the language of Judge Stockbridge in his opinion before quoted :

"But when Congress and the Court of Claims has acted, and made the selection of the object of the nation's bounty, it does not seem to me within the purview of a State Court to inquire into or divert to a different channel the gratuity so bestowed."

X.

CONGRESS HAS FREQUENTLY IN ITS ACTS APPROPRIATING FOR FRENCH SPOLIATION CLAIMS MADE THE DONATION TO ONE TECHNICALLY AN ASSIGNEE OF THE ORIGINAL SUFFERER, BUT NOT SUCH IN INSOLVENCY OR IN BANKRUPTCY OR FOR PURPOSES OF SPECULATION.

We have quoted the case of Adams, admr. of P. C. Brooks, vs. U. S., where Congress made the appropriation to one who was the assignee of the original sufferer, and who obtained his assignments years after the date of the losses. The Act of March 3, 1899, and the Act of February 18, 1902, making appropriations to pay these claims, contained appropriations to the administrator of Peter Chardon Brooks, as assignee of individual underwriters, under assignments, made to him at various dates, over twenty in number.

The last-named Act also contains an appropriation to Thomas P. Hall, assignee of Thomas Bartlett, in the case of the Ship Galen, John Mackey, Master. This history of this claim appears under the heading.

The Ship Galen, 37 Ct. Cl. 89.

The following were the facts of that case as found by the Court :

"X. In case No. 10, the claimant has proved to the satisfaction of the Court that Thomas Bartlett was a citizen of the United States, and that he, the claimant, is his grandson, and sole surviving executor of his estate, and that by a deed of assignment dated December 14, 1850, he assigned and trans-

ferred his claim to the claimant in consideration of a dollar and of the love and affection which he bore his grandson."

The Ship Galen, 37 Ct. Cl. page 92.

Here is a single one of his descendants designated by the original sufferer to receive his claim, and the Court felt that under the circumstances it was no violation of the intent of the Act of Congress to give the claim to an assignee who was not such for purposes for speculation, but was the one of his blood designated by the original sufferer. Certainly the equity of the assignment so recognized by the Court of Claims and Congress, is not as strong as the equity worked in favor of treating William B. Buchanan and the firm of which he was a member, as substituted in the place of the original firm of which he was not a member, and entitled to share in the bounty of Congress, along with the partners of that firm. It is clear that his two partners considered him so entitled. It is the consideration of just such a case as this that made this Court use the significant language below quoted in describing the unlimited latitude which Congress possessed in determining who were the parties that should be equitably entitled to receive these awards.

"After all it would then go as the original claimants might have desired it, if no special reasons operated to the contrary, and as in frequent instances it would have finally gone, when those reasons, if once existing, ceased to operate."

Blagge vs. Balch, 162 U. S., page 462.

And again on page 463:

"From these considerations and by necessary construction of the language employed, it results that 'next of kin' as used in the proviso means next of kin living at the date of the Act. The Court of Claims must certify that the personal representatives 'represent the next of kin,' and that Court has properly held that before there can be a certificate of that fact it must appear that some next of kin are now in existence. (Hooper vs. United States, 28 Ct. Cl. 480; Durkee vs. United States,

28 Ct. Cl. 326.) *This construction is sustained by the legislation of Congress referred to in Durkee vs. United States, where two instances are mentioned of special Acts giving the fund to other than blood relations of the original sufferers. The exceptions prove the rule.*"

Assuming for the argument that our brothers can correctly designate Samuel Smith and James A. Buchanan as the original claimants, is there any doubt, not as to what they "might have desired," but as to what *they did desire*, with regard to where this award should go, when we read the affidavit of Mr. James A. Buchanan and the deed of trust made by the firm of Smith & Buchanan to Ellicott and Meredith, and the language of the Memorial to the Commissioners of Spanish Claims? Is it not plain that they considered that a partner's interest in these French Spoliation Claims had become the property of William B. Buchanan, whatever was his age at the time of the happening of the loss in question? Can this Court, or any just man, doubt as to what was the desire of the original claimants at the date of those documents, and that they would consider as most inequitable, any other disposition of the claims than the one they recognized?

XI.

The Equality of the Shares of the Partners.

The Court of Claims, in describing the constitution of the partnership, gave no indication that there was any inequality in such shares. None of the evidence before the Court or before the State Courts indicated any inequality, and the Circuit Court No. 2 of Baltimore City, as appears by Judge Stockbridge's opinion, decided that the absence of any evidence tending to show that the agreement of partnership expressed or implied any inequality in shares made it necessary to assume that they were equal, in accordance with the well-known principles of law.

See—Story on Partnerships, sec. 24.
Pomeroy-Smith's Mer. Law, sec. 37, note 102.
Pollock, Digest of Law of Part., (1900), page 75.
Lindley, Law of Part., (1893), page 355.
Fleischman vs. Gottschalk, 70 Md. 523.

The defendants in error have evolved a theory which they twice presented to the Court of Appeals of Maryland, without obtaining recognition of it, that the two elder members of the firm contributed the greater portion of the capital or all the capital, and that William B. Buchanan, the junior member of the firm, contributed little or nothing. The difficulty with this theory is, that there is not an item of evidence in all the Record which shows what amounts of capital, if any, were contributed by either of the two senior members of the firm, though it is a necessary implication from James A. Buchanan's own affidavit, that William B. Buchanan, when admitted into the partnership, contributed and thereby lost his "considerable independent fortune." But it would be impossible for the counsel on the other side who put forward their theory, to name any sum contributed by either Samuel Smith or James A. Buchanan. They assume that Samuel Smith and James A. Buchanan possessed all the capital of the firm, when William B. Buchanan was admitted into the partnership. But what the net amount of that capital was, and whether, after allowing for the debts of the partnership, there was one dollar of surplus assets to go into the scale against William B. Buchanan's considerable independent fortune there is not a jot or tittle of evidence. Even if such surplus of assets over indebtedness was contributed against William B. Buchanan's youth, energy and capacity, we do not know what that capital was, nor is it law that it should be first repaid to the partners, contributing it, unless such was the clear intention of the agreement of partnership. Even if it is not a necessary implication from James A. Buchanan's testimony that his son actually turned over to the firm his considerable independent fortune as part of its assets, such fortune nevertheless became responsible for the firm's debts after the application of the firm's assets. But we have the positive testimony of the deed of trust and of the Memorial of the trustees that these claims belonged to the three partners in their partnership capacity, which expression of the deed of trust has been crisply con-

densed in the finding of the Court of Claims in case No. 381 on page 83 of Record, as follows:

"X.

"November 9, 1820, said Samuel Smith, James A. Buchanan and William B. Buchanan, copartners, and trading as hereinbefore set forth as copartners under the firm name of S. Smith & Buchanan, assigned in trust to Thomas Ellicott and Jonathan Meredith, as trustees, all their real and personal estate belonging to them in the said copartnership capacity of S. Smith & Buchanan."

"V.

"In case No. 381—The firm of S. Smith & Buchanan were the owners of one-half of the vessel and seven-sixteenths of the cargo. The losses of Smith and Buchanan by reason of the capture of the 'Jane' and her cargo, for which they are entitled to indemnity, are as follows. . . . $11,660.22." (Record, page 82.)

In the case No. 2011—The Court of Claims found the same thing with respect to the deed of trust, that the claims embraced in it were owned by the firm in their copartnership capacity, and said on page 78 of Record:

"IV.

"Samuel Smith, James A. Buchanan and William B. Buchanan, citizens of the United States, formed the said firm of S. Smith & Buchanan. The said cotton was worth the sum of $4,100, of which said Donnel and said firm each owned half."

"V.

"The said firm of S. Smith & Buchanan and John Smith, Jr., owned jointly, one-half by said firm and one-half by said John Smith, Jr., the coffee shipped on said 'Patapsco.' Said coffee was worth the sum of $46,012."

This is the record which shows the ownership of the ships and cargo, and there is not one item in it that can lead to the conclusion that the partners of this firm had anything but an equal interest. Under the circumstances, therefore, if the award was made to this firm, as contended by the plaintiffs in error, there can be no question whatever as to the relative shares of the partners.

For these reasons, a reversal of the decree appealed from is prayed.

Respectfully,

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Attorneys for Plaintiffs in Error.

SUPPLEMENT A.

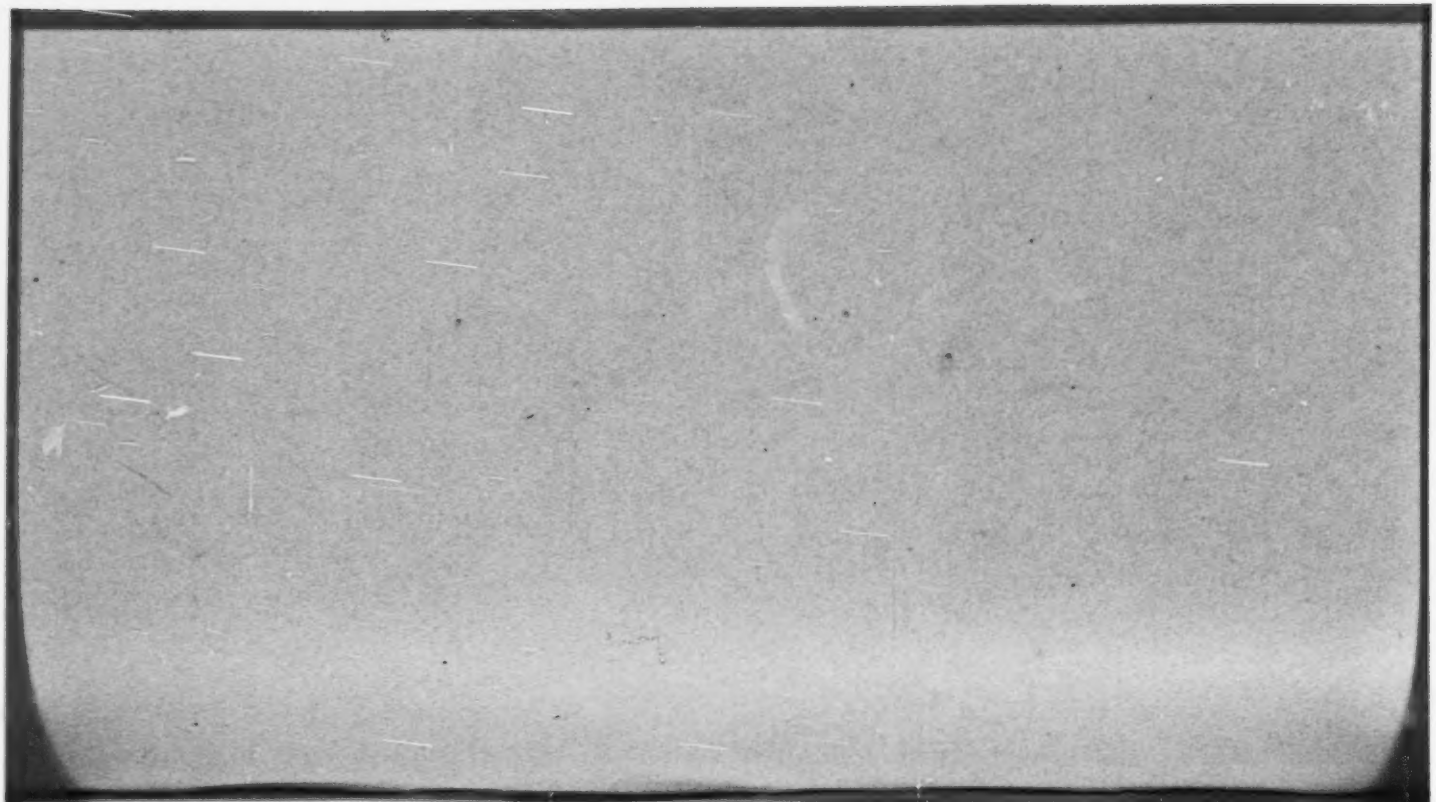
Opinion of Judge Stockbridge in

ESTHER S. BUCHANAN, *Administratrix et al.,* vs. WILSON C. BUCHANAN ET AL.	In the Circuit Court No. 2 of Baltimore City.

SUPPLEMENT B.

Opinion of Judge Wickes in

PENNIMAN ET AL. vs. HOOK ET AL.	In the Circuit Court of Baltimore City.



SUPPLEMENT A.

Opinion of Judge Stockbridge in

ESTHER S. BUCHANAN, *Administratrix et al.,*	In the Circuit Court No. 2
vs.	of
WILSON C. BUCHANAN ET AL.	Baltimore City.

At the hearing of this case the plaintiff filed formal exceptions to evidence, three in number. The first was with regard to the admissibility of a certain letter-book, the offer of which letter-book was withdrawn by the defendants, and it is unnecessary therefore to rule with regard thereto.

The second exception was with regard to certain evidence of Capt. J. Lewis Smith as to the quantum or proportion of the interest of the prospective partners in the firm of "S. Smith & Buchanan." This testimony was manifestly hearsay, and the exception to it is well founded.

The third exception is to the offer in evidence of certain papers, to wit, sundry certificates of enrollment, memorials, etc. These might be offered as evidence for two entirely separate and distinct purposes, for one of which purposes they would be clearly inadmissible, whereas for the other purpose, for reasons which will appear later, they would be entitled to be admitted, and if admissible for any purpose legally, the objection as made is too broad, and it will therefore be overruled.

The complainant in this case is the administratrix *d. b. n.* of William B. Buchanan, and as such administratrix prosecuted before the Court of Claims two certain claims of the class known as French Spoliation Claims, and prosecuted them in virtue of the fact that her decedent was the last surviving member of a firm of "S. Smith & Buchanan." A finding of the Court of Claims was made in her favor

for two amounts, and she was duly certified to the Treasury Department by the Court of Claims, after Congress had made an appropriation based upon those Findings, as representing the next of kin of the original sufferers. The contention in this case is practically one as to who were the original sufferers, and without rehearing at length the various facts, or Acts of Congress, I shall simply state the conclusions at which I had arrived after an examination of all the proceedings, and the various authorities cited by council.

It appears that there were two firms of "S. Smith & Buchanan"—one composed of Samuel Smith and J. A. Buchanan, the other of Samuel Smith, J. A. Buchanan, William B. Buchanan, and with possibly an interest also in a certain John Smith, Jr., though as to this last, his interest as a partner cannot be said to be authoritatively established by proof. Under the Act of 1885 Miss Buchanan presented her claims before the Court of Claims, in virtue of her right as the representative of William B. Buchanan, who was the surviving partner of the firm secondly referred to. The evidence before the Court of Claims in that case showed, as clearly as now appears, the fact of the existence of two firms. The representatives of Samuel Smith and of James A. Buchanan, as well as Miss Esther Buchanan, were before that Court presenting claims for losses growing out of the seizures of one or both of the vessels in question, and in connection with that of the "Patapsco" we find Congress acting upon the conclusions of the Court of Claims, making appropriation to George W. Brown, as administrator of James A. Buchanan; to Robert Carter Smith, as administrator of Samuel Smith; to Virgilia B. Brook, administratrix of John Smith, Jr., as well as to Miss Esther S. Buchanan, the complainant in this case. It is therefore manifest, that in their Findings the Court of Claims was not laboring under any misapprehension of facts, and by those Findings they recommend to Congress the claim represented by Miss Esther S. Buchanan, administratrix of William B. Buchanan, the

surviving member of the firm composed of three. The defendants in this case insist that inasmuch as the Findings of the Court of Claims do not constitute a judgment, it is now competent for them to ask a State Court to review the evidence in the case, and upon that alone, or upon that supplemented by additional evidence, find that the fund that has thus been awarded by Congress is payable to the representative of the last survivor of the firm of Smith & Buchanan, composed only of Samuel Smith and James A. Buchanan, upon the theory that they were the sufferers, and not to the representative of the firm in which William B. Buchanan was a partner. I am unable to take this view. The money in question is a mere gratuity; nothing more and nothing less; it is true that the Findings of the Court of Claims were not a judgment in the sense that the action of that Court is, when passing upon cases, under a jurisdiction differently conferred, and it is perfectly true also that Congress might, or might not, as it saw fit, have accepted the Findings of that Court, and by an appropriation provided the necessary money to pay the same, or it might have accepted in part or rejected in part. In order to confer jurisdiction for the entry of a judgment two things are necessary—action by a legislative body which confers a jurisdiction, and an action of a judical body in conformity with the jurisdiction conferred. What happened in this case, was a jurisdiction conferred to investigate and report; the investigation and report made by the judicial body and then the action of the legislative body making the necessary appropriation to satisfy the finding. While the order is inverted from that which usually obtains, I do not see how it can be successfully argued that when both the legislative and judicial bodies have acted each within its appropriate sphere, that the net result of that action is anything less than a judgment. It would have been entirely competent by the joint action of Congress and the Court of Claims to have made an award and appropriation to Mr.

George W. Brown, as administrator of James A. Buchanan, the surviving member of one firm of Smith & Buchanan, of such amount as it saw fit, or to have awarded the same or a different amount to the complainant as administratrix of the estate of William B. Buchanan, as surviving member of his firm, or to anybody else which they mutually saw fit.

But when Congress and the Court of Claims had acted, and made a selection of the object of the nation's bounty, it does not seem to me within the purview of a State Court to inquire into, or divert to a different channel the gratuity so bestowed. In the most favorable light that the case can be put for the defendants, the Court of Claims was mistaken in the matter of the identity of the two firms of Smith & Buchanan, and if the case be one of mistaken identity, it then comes directly under the ruling already previously made in the case of Penniman vs. Hook, in the Circuit Court, and the result would be the same.

It has been suggested in argument that the interest of the three partners, Samuel Smith, James A. Buchanan and William B. Buchanan, was not equal, but that Samuel Smith enjoyed a half interest in the firm. That it would be entirely competent under the provisions of the Act and under the constructions placed upon it for State Courts to enquire into the terms of a partnership, and the proportional interest of the several partners, seems clear. It is this very class of questions which is included in language such as that used by the Court of Claims and the Supreme Court of the U. S. when it declared that the Court of Claims does not by its Findings assume to specify the ultimate beneficiaries. Just as Congress by its Act recognized that under the statutes of different States there might be a variation among the persons who were to be considered next of kin, and that matter was remitted for determination to the laws of the several States, in like manner, the quantum of interest was a question upon which neither the Court of Claims nor Congress assumed to pass; and it is for this reason that I have admitted in

evidence the certificates of enrollment, memorials, etc., offered upon the part of the defendants. As was said when passing upon that exception to evidence, those documents would be inadmissible in this case if offered for the purpose of establishing who were the original sufferers; but since it is possible that they might at the same time shed some light on the respective rights of the parties *inter sese*, and since that is a matter within the scope of the jurisdiction of the State Court, they are admissible for this purpose. When these are examined, however, they fall far short of affording any substantive proof as to the respective rights of the partners between themselves as partners, certainly not sufficient to overcome the legal presumption of equality, and I am, therefore, constrained to hold that the fund in question is distributable among those persons who were the next of kin of Samuel Smith, James A. Buchanan and William B. Buchanan, living on the 3d day of March, 1899, the day on which the appropriation was made.

There has also been some argument as to the manner of distribution, although that does not appear to be an open question, certainly, in this State. Congress specifically left the designation of the persons to the laws of the several States, which determine by their Statutes of Distribution who were to be regarded as next of kin. While it is true that the money was paid to Miss Buchanan as administratrix, she does not hold it in the strict, technical sense of an administrator, but rather in that of a trustee, and holding it as trustee, no reason is apparent why the distribution should not be made directly by this Court to those persons who are the *cestui que trusts*, namely, the next of kin. Who the next of kin are the statutes of this State abundantly provide, making provision therefor *per stirpes*, and this, as I understand, is directly in accord with previous determinations in this State upon this same question.

A decree will be signed in accordance with the views thus expressed.

SUPPLEMENT B.

Opinion of Judge Wickes in

PENNIMAN ET AL.	In the
vs.	Circuit Court
	of
HOOK ET AL.	Baltimore City.

By the French Spoliation Act of Congress, approved January 20, 1885, it is prescribed that such citizens of the United States or their legal representatives as had valid claims to indemnity upon the French government arising out of the illegal captures * * * prior to the ratification of the convention between the United States and the French Republic, concluded on the 30th day of September, 1800, the ratifications of which were exchanged on the 31st day of July following, may apply by petition to the Court of Claims within two years from the passage of this Act, as hereinafter provided:

"Further, it is provided that the Court of Claims shall examine and determine the validity and amount of all the claims included within the description above mentioned, together with their present ownership, and if by an assignee, the date of the assignment, with the consideration paid therefor, and they shall decide upon the validity of said claims according to the Rule of Law, municipal and international, and the Treaties of the United States applicable to the same, and shall report all such conclusions of fact and law as in their judgment may affect liability of the United States therefor," and that "such findings and report of the Court shall be taken to be merely advisory as to the law and facts found, and shall not conclude either the claimants or Congress, and all claims not finally presented within the period of two years limited by the Act shall be forever debarred."

Many difficulties arise in the construction of the Act as to who were legally and equitably entitled to receive the money which Congress might see fit to appropriate for the payment of these claims, and the Court said in Buchanan vs. United States, 24 Court of Claims, page 81, in reference to the cases which had already been before it: "In none of these cases had the Court assumed to determine who were the next of kin of a deceased claimant, nor whether there are any; nor in what proportions were the several interests of partnership owners; nor whether creditors or descendants have the superior equity; nor whether the children of a bankrupt are entitled to a residue of his estatate; nor whether the receivers of a defunct corporation represents creditors or stockholders; in other words, the Court has not assumed to determine what persons are legally or equitably entitled to receive the money which Congress may hereafter appropriate for the discharge of those claims."

These and other conclusions of the Court having been reported to Congress, appropriations were made to pay certain enumerated claims by Act of 1891, with the following proviso:

"Provided that in all cases where the original sufferers were adjudicated bankrupts, the award shall be made on behalf of the next of kin, instead of to assignees in bankruptcy; and the awards in cases of individual claimants shall not be paid until the Court of Claims shall certify to the Secretary of the Treasury that the personal representatives on whose behalf the award is made represent the next of kin, and the Court which granted the administrations respectively shall have certified that the legal representatives have given adequate security for the legal disbursement of the awards.

Among other claims presented under the Act of 1885, and within the two years required by the Act, was one on behalf of the estate of a certain Bale or Beal Owings, a

merchant of this city, engaged in maritime ventures at the close of the last century.

Letters of administration were taken out by Mrs. Frances Penniman, a great-niece, for the purpose of presenting this claim, which arose from the seizure of the "Emily" by the French within the period prescribed by the Act.

Bale or Beal Owings died in 1831, leaving a will, but no widow or children. He was a partner in the firm of Rogers & Owings, the owners of the vessel, and an additional claim was made on behalf of his estate for the value of the cargo.

These claims were successfully prosecuted, the Findings of the Court of Claims were reported to Congress, an appropriation made to pay them, the certificate required by the Act of 1891, and all other proceedings necessary to be complied with were taken, and the money paid over to Mrs. Penniman, as the administratrix of Bale or Beal Owings, who died in 1831, to be distributed among the next of kin, as required by the Act of Congress. At this stage of the proceedings she was met by various claimants upon the fund in her hands—

1. By those who supposed they were entitled to take under the will of Bale or Beal Owings.

2. By next of kin, irrespective of his will.

3. By next of kin of a certain Bale or Beal Owings, of Richard, who died in 1802, who it was alleged was the real owner of the cargo in question.

Under these circumstances, Mrs. Penniman has filed this bill for the purpose of distributing the fund in her hands under the direction of the Court.

Since the filing of the bill the Supreme Court of the United States, in Blagge vs. Balch, 162 U. S. 439, has construed the proviso to the Act of 1891 to mean that Congress intended the next of kin to be the beneficiaries in every case, and that the express limitation to the effect excludes creditors, legatees, assignees and all strangers to the blood.

And the Court further said that the words "next of kin," as used in the proviso, mean next of kin living at the date of the Act, to be determined according to the Statute of Distribution of the respective states of the domicile of the original sufferers.

This, of course, eliminates from the case all those who claim under the will of Bale or Beal Owings, to whose administratrix this fund has been awarded, and the only remaining controversy is on behalf of those who claim as the legal representatives of Beal Owings, of Richard, who died in 1802.

No reported case, it is said, deals with a condition so peculiar.

The contention on their behalf is distinctly placed upon the ground that the "Findings of the Court of Claims in this class of cases are not in the nature of judgments and can be collaterally assailed in the State Court where the distribution of the funds is being judicially administered."

And further, were this not so, that "in the case here made out by the bill and answer, parties firstly entitled, if they be parties to the suit, would not be bound by such judgment."

This settled law, that the Findings of the Court of Claims in this class of cases are not judgments by the very terms of the Act of 1885; they are made "advisory" only, and do not conclude either the claimant or the Government. The decisions are numerous to this effect, but this is not all; it is but one step in the chain of procedure. These Findings are reported to Congress, which has power to accept, or reject, or modify them as it sees proper.

In this particular instance, whether the findings of the Court are accepted and acted upon or whether additional proof was required, I am not informed; but certain it is that an Act was passed appropriating money to pay the claim which Mrs. Penniman represented. It is also certain that the Court of Claims subsequently certified to the Sec-

retary of the Treasury that the administratrix represented the next of kin of Bale or Beal Owings, who died in 1831, and had given bond in the probate Court appointing her to distribute this fund among the legal representatives, leaving only to the State Court the determination of the question as to who constituted the next of kin in event of controversy as to the fact. This, and this alone, is the power reserved to the State Courts in this proceeding, and this, I think, is the measure of our jurisdiction.

In Van Wagenen vs. United States, 25 Court of Claims, page 110, in which there was a conflict between the holder of the record title and the equitable, the Court said: "We do not enter judgment in French Spoliation cases, nor determine what persons are entitled to the money which Congress may hereafter appropriate, but will lay before Congress all the facts material to questions which must be decided by that body." So that while the Court of Claims do not enter judgments, and finds only facts to lay before Congress, the action of Congress seems to be final where conflicting claims are presented. More especially is this the case when we remember that these awards stand upon the footing of a gratuity, to which the language of the Supreme Court in Emerson vs. Hale, 13 Peters, 409, especially applies.

A claim having no foundation in law, but depending entirely on the generosity of the Government, constitutes no basis for the action of any legal principle.

It cannot be assigned; it does not go to the administrator; as assets it does not descend to the heir, and if the Government from public policy or any other consideration shall think proper under such circumstances to make a grant of money to the heirs of the claimant, they receive it as a gift or pure donation.

But we are not entirely without authority as to the final and conclusive character of the proceeding at Washington by which Congress donates certain sums of money to the next of kin of those whose property was subjected to spoliation by the French government.

In the case of United States vs. Gilliat, 164 U. S. 42, the claim was made by John A. Brimmer, administrator of John Gilliat, to whom the appropriation was ordered to be paid. He was not able, however, for some reason to comply with the Act of 1891, and Charles Gilliat presented his petition to the Court of Claims for the payment of one-third the amount named in the appropriation, on the ground that he was a grandson of one of the original sufferers, and had been appointed administrator *d. b. n.* of the estate of his grandfather, etc. The Court upon hearing certified to the Secretary of the Treasury for payment to the extent of one-third, etc. Now, the action of the Court of Claims was made under a special Act of Congress of August 23, 1894, in which it was ordered that the money "be paid to the person or persons entitled to receive the same to be ascertained by the Court of Claims upon sufficient evidence and certified to the Secretary of Treasury."

The Court decided that the petitioner was administrator of his grandfather's estate, who was an original sufferer—that he represented the descendants and next of kin and certified to the Secretary of the Treasury for payment to such administrator, etc. The Attorney-General entered an appeal, taking the certificate of the Court of Claims as a judgment.

Mr. Justice Peckham, delivering the opinion of the Court, said: "As the action of the Court of Claims upon the original claim made under the Act of 1885 was not the subject of an appeal to this Court, but was simply advisory in its nature, the whole matter being left to the discretion of Congress, we think it clear that it was not the intention of that body to permit an appeal from the Findings of the Court of Claims upon the subsiduary question as to the particular person or persons to whom the appropriation already made by Congress should be paid. It was undoubtedly the intention of Congress, by the language used in the Act of 1894, to refer to the Court of Claims simply the ascertainment of the proper

person to be paid the sum which it had already acknowledged to be due to the representatives of the original sufferers from the spoliation, and it was not intended that the decision which the Court of Claims might arrive at should be the subject of an appeal to this Court.

"We think that Congress intended that such facts had been ascertained by the Court of Claims upon evidence sufficient to satisfy that Court, the fact was to be certified by the Court to the Secretary of the Treasury, and such certificate was to be final and conclusive."

So that, whether, as in Van Wagenen's case, Congress is to decide the questions arising upon facts reported by the Court of Claims, answering questions of conflicting claimants, or sees proper to delegate the power to the Court of Claims, as in the Gilliat case, the result is that the decision arrived at is "final and conclusive," from which no appeal lies, and into the correctness of which no State Court has jurisdiction to inquire.

There is no suggestion of fraud or misrepresentation in this case. If a mistake was made, as is alleged, it was an absolutely innocent mistake for counsel on both sides of this case represented Mrs. Penniman in the prosecution of the claim before Congress.

I have not gone into the question of error in the proceeding at Washington, for assuming it all to be true, we have no power to correct it. Nor have I referred to the omission of these parties to present their claim within two years allowed by the Act. Forever barred as they are from proceeding in the only way pointed out by the Act of 1885, they are seeking now to avoid the consequences of their own laches, by attempting to reap the benefit of the superior diligence of others.

A decree will be signed in favor of the next of kin represented by Mrs. Penniman.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1902, No. 266.

ESTHER S. BUCHANAN ET AL.,
Plaintiffs in Error,

vs.

LAURA PATTERSON ET AL.,
Defendants in Error.

In Error to the Court of Appeals of Maryland.

REPLY OF PLAINTIFFS IN ERROR TO BRIEF OF DEFENDANTS IN ERROR.

It would, perhaps, be of assistance to the Court to note what seem to be certain inaccuracies of statement, or erroneous views, in the brief of the defendants in error.

I.

Point I of the defendants in error's argument is devoted to the effect of the statement in the opinion of the Court of Appeals of Maryland, quoted on page 11 of brief of defendants in error, as follows:

"*The whole record shows beyond question that she represented with their consent all the parties who are now claiming against her.*" (See also Record, page 99.)

So far from there being any intention on the part of the plaintiffs in error to negative this statement in any degree, it was expressly claimed on their behalf. But what is the effect of such statement? If Miss Buchanan filed her claim in the Court of Claims and urged it to the final award in that Court and collected the money, with the "full consent and authority of all the next of kin" of the defendants in error, (defendants' brief, page 11), did they not consent that she should urge it, as she did, on behalf of the next of kin of her own intestate equally, as on behalf of themselves? Did they not consent that she should take every step which she took in the Court of Claims, strictly in behalf of the right of her intestate, William B. Buchanan, as the surviving partner of the firm of which Samuel Smith, James A. Buchanan and himself were members? Did they not consent to every conclusion of law and finding of facts which she obtained in the Court of Claims, and which are enumerated in the brief of the plaintiffs in error, from page 9 to 16?

II.

Notwithstanding this finding of fact of the Maryland Court of Appeals, that the whole proceeding to obtain these awards in the Court of Claims was with the consent and authority of the defendants in error here, these defendants in their next point, (pages 12 to 15 of their brief), with strange inconsistency, endeavor to explain away the consequences of the fact, that the administrators of Samuel Smith and James A. Buchanan appeared in these proceedings side by side with Esther S. Buchanan, administratrix of William B. Buchanan, and took every step at the same moment with her, and shared in every finding which she obtained, by denying that they were in any way parties to that proceeding. In this connection it is only necessary to quote 1 Greenleaf on Evidence, sections 522–523, quoted and adopted by this Court:

"It is also a most obvious principle of justice, that no man ought to be bound by proceedings to which he is a stranger. But the converse of this rule is equally true, that by proceed-

ings to which he was not a stranger, he may well be bound. Under the term "parties," in this connection, the law includes all who are directly interested in the subject matter, and had a right to make defense or to control the proceedings; and to appeal from the judgment. This right involves, also, the right to adduce testimony and to cross-examine the witnesses adduced on the other side. Persons not having these rights are strangers to the cause. But to give full effect to the principle by which parties are held bound by a judgment, *all persons who are represented by the parties, and claim under them, or in privity with them, are equally concluded by the same proceedings.*"

See Lovejoy vs. Murray, 3 Wall. (70 U. S.) page 19, cited and affirmed in Robbins vs. Chicago, 4 Wall. 657, at page 672.

Therefore, besides the express authority given Miss Buchanan and her representation of them in accord herewith, the next of kin of Samuel Smith and James A. Buchanan in both claims were represented by the administrators of those worthies, and "claimed under them" and "in privity" with them. But more than that, their next of kin here claim expressly that the proceedings were taken only with their own consent, by their own counsel chosen to represent them; hence they "controlled" the proceedings. They did "adduce testimony" and "examined," or had the right to cross-examine, all the witnesses adduced by the administratrix of William B. Buchanan, and in fact they did adduce witnesses of their own in support of her claim, in the very method and by virtue of the very rights upon which she claimed and received her award, and yet they now claim to have had no lot or part in, and to be in no way bound by, these proceedings, which, in the same breath they have said, were taken only by their own express consent, and hence were under their own control.

The Court of Appeals of Maryland found it equally as a fact (by which finding, according to the defendants in error, this Court is bound), "that those parties who instituted the proceedings in the Court of Claims," "all the parties now

claiming against her," who consented to and authorized the proceedings in the form in which she instituted them, "made a mistake," and "the mistake made" "by those parties" "was in assuming that her intestate was a member of *the firm* as constituted at the time of the losses," "nor does it appear that this mistake was discovered until after the filing of the bill in this case." (Record, pages 101, 102, 99, 100.)

Therefore, the facts found by the Maryland Court of Appeals are, that all the conclusions of law and of fact appearing in the Findings of the Court of Claims and the action of Congress in strict accordance with those findings, were the result of the consent, authority and instructions to that effect, given this plaintiff in error, by the parties who are now here as defendants in error, whose own chosen counsel framed, in the name and for the benefit of the plaintiff in error, the very terms of the findings of the Court of Claims and of the Acts of Congress, which gave her her rights. In a word, what the plaintiff in error did, or what was done in her name, by counsel actually chosen by and representing the defendants in error, and instructed by them, was pursuant to what the defendants in error themselves denominate in their brief "the good understanding between the *cestuis que trustent* and the claimant" Esther S. Buchanan, administratrix of William B. Buchanan. (See Defendants in Error's Brief, page 8.)

This understanding and the instructions pursuant to their authority, given by the defendants in error to the plaintiff in error were consistent and continuous, and were never withdrawn or reversed until "the mistake was discovered after the filing of the bill in this cause." That is the whole case, and the Court of Appeals of Maryland claim that, upon the filing of the amended answers of the defendants in error, it had a right to "now correct the mistake" (Record, page 101), and take away from the plaintiffs in error what the defendants in error, pursuant to that understanding, had authorized her to ask and obtain from Congress for her own self equally with themselves.

III.

If, therefore, there was an express understanding, whether due to a mistake, or founded, as we have shown, upon good and equitable consideration passing between the three parties, described as entitled to the claims, what possible relation can the doctrine of an executor *de son tort*, or trustee *de son tort*, bear to the case presented here? A trustee *de son tort* is one who has acquired property in fraud or violation of the trust or understanding which exists, and which the law implies between himself and the parties entitled to the trust estate in question. It is never one who has acquired and holds the property in question pursuant to the strict terms of the trust or understanding impressed upon him or the property.

Therefore, it is respectfully contended, that all the cases referred to in the brief of the defendants in error on pages 22 to 26 of said brief, relative to the powers of a Court of Equity "to follow a trust upon property which has passed into the hands of a wrongful owner" and "convert him into a trustee for the true owner," and "compel him to convey the legal title," have no application in this case.

It need also hardly be repeated here that the cases of William vs. Heard, 140 U. S., and Butler vs. Gorely, 146 U. S., cited by the defendants in error, were cases referring to the Alabama Claims, which this Court said, in Blagge vs. Balch, were, by the terms of the Act which appropriated them, claims tantamount to property rights, transmissible in all respects as property, and totally different from these claims which were mere gratuities, gifts of grace, in which no persons had any legal rights, transmissible in any way at all. Consequently cases like the case of Johnson vs. Towsley, 13 Wall, page 72, where the Court says, "numerous cases are found in the Courts of Kentucky and Virginia, where they have, by proceedings in equity, established the junior patent to be the title instead of the elder patent," and otherwise construed the effect of the proceedings of the land office, certainly have no relation whatever to a case like the present, where the parties have no legal rights whatever, but only enjoy such gratuities as Congress has

expressly granted to the next of kin of certain designated persons. All these cases cited on page 26 of brief of defendants in error are the mere equitable construction of legal rights which the parties have obtained from Courts of limited jurisdiction or from the *executive department* of the government, but nowhere has any Court of Equity ever undertaken to disturb or set aside a *legislative grant*, given to a person or persons nominatim, or to the heirs at law or next of kin of a named person. We will not repeat the authorities on that subject.

IV.

Further, we especially call the Court's attention to the fact that when our adversaries claim (pages 33, 34 of their brief) that the plaintiff in error here went into Court to get a Court of Equity to determine as against herself, or the next of kin of her intestate, to whom Congress had made this gift, what parties were equitably entitled to it, they altogether misstate the terms of her bill in equity, and of the gift and the conditions of the gift which Congress had ordained respecting this subject matter. The bill of the plaintiff in error, in the Court of Equity below, expressly asserted, in accordance with the terms of the Act of Appropriation, that she held this fund for the benefit of the next of kin of William B. Buchanan, to whom Congress had given it as the surviving partner of the firm named in the Act and in the Findings of the Court of Claims, as well as the next of kin of the other partners. She did not ask, and she could not in law ask, that the Court should determine whether the fund should be taken away from the next of kin of her own intestate and given exclusively to the next of kin of the other partners named in her bill. (See Record, pages 11 to 15.)

When defendants in error state that such was the prayer of the bill, they misstate it to the extent of stating the very opposite, for the very prayer quoted, when taken in connection with the allegation of law in the bill, shows that it could only be to the effect that the Court "would distribute the same among the next of kin of the three partners named," according to the

Statute of Distribution of Maryland, which is plainly what was meant by the " proportion and rule of the State Court."

Moreover, the bill said, with particularity, on page 15 of record, that your oratrix is in doubt "*as to the proportion in which said beneficiaries should properly participate in the respective shares of their ancestors in said fund,*" and in paragraph 12, "is informed and does verily believe that distribution of said fund should be made in three equal parts among the next of kin of said firm of S. Smith & Buchanan."

V.

Are not our adversaries then reduced to straits when they contend, as they do, on page 34 of their brief, that no federal question was necessarily involved in the action and decision made by the Court of Appeals of Maryland in this case? If the Court of Appeals of Maryland had confined itself to granting the relief asked according to the prayer of the bill, it would have merely determined who were the next of kin of the three members of the firm to whom Congress and the Court of Claims by their joint action gave this award, and in what proportions the next of kin of the said three members, respectively, were entitled. But the Court of Appeals took up another question, viz., which of two firms was the original sufferer contemplated by implication from the terms of the Act of 1885, and decided that it was another firm than the one to whom Congress by the Act of 1899, appropriated the award, thereby expressly making and deciding a federal question, which the prayer of the bill did not ask them to decide, and which took away all the rights of the plaintiffs in error, which had been expressly alleged in the bill, and expressly admitted by the answers of the defendants in error, until the last moment when the amended answers were filed, and which rights, as we claim, were expressly given these plaintiffs in error by the Act of Appropriation of 1899. It is one of the numerous inconsistencies to which the defendants in error have been driven, when they assert in one breath that there

was no federal question involved in the decision made by the Court of Appeals of Maryland, and yet that the Court of Appeals of Maryland had the right and jurisdiction to decide, and did decide, who were the original sufferers within the terms of the Act of 1885, notwithstanding the findings and award of the Court of Claims on that subject, and the terms of the Act of gift or appropriation of Congress, March 3, 1899.

If the Court of Appeals of Maryland had limited itself to its proper duty of determining who were the next of kin of Samuel Smith, James A. Buchanan and William B. Buchanan, and to what proportions they were entitled in the right of their respective ancestors, to share in the fund, as that Court itself seemed almost to recognize as its proper function in the premises (Record, page 117), there would have been no Federal question. But as it was, they expressly undertook to construe the Acts of Congress and exclude the next of kin of William B. Buchanan from their share in the award, which was expressly granted to them as a gracious gift of Congress by the terms of the Act of Appropriation.

VI.

In their brief on page 8, the defendants in error for the first time make the suggestion that the fiduciary in this case obtained by fraud a certificate that she represented them, and that the decision of the Court of Claims was wholly *ex parte* and without notice to the beneficiaries, and this too in the face of their own repeated declarations that she *did really* represent them. (Brief for Appellees, pages 11, 14, etc.)

This is the first time that any suggestion of fraud has been made in the case. This Court will observe that the Court of Appeals of Maryland dealt with the case without discovering any suggestion of fraud or improper conduct on the part of Miss Buchanan, the plaintiff in error, and the search of the pleadings, including the amended answers of the defendants in error, disclose no such imputation, even by implication; but the pleadings do show that the defendants in error shared Miss Buchanan's belief, here insisted on, as to her own rights,

up to the moment of filing those answers, when, for the first time, they discovered their own alleged mistake, to refer again to the opinion of the Maryland Court of Appeals. No Court has ever founded fraud upon a mere insinuation, but requires it to be both plainly charged and plainly proven, to make it the foundation for relief. Such an insinuation can only recoil upon the defendants in error and illustrate the unworthiness and desperation of their contention here. But with this charge made against this lady, the plaintiff in error here, it is due to her and to this Court, to point out that the certificates obtained from the Court of Claims and thus stigmatized and claimed to be "without notice to the beneficiaries" on the brief of the defendants in error, were obtained by the application of one of the counsel, now here in this Court representing the defendants in error, and who then represented these defendants in error equally as much, and, in fact, to be arithmetically exact, twice as much, as he purported to represent this lady, the plaintiff in error.

The application, as the Court states, was made by the counsel himself, and not by the plaintiff in error, who, being a lady, was, of course, in a matter of this kind, altogether in the hands of her counsel, and controlled by him. Surely the counsel did not mean in his brief to insinuate that his application was a "fraud," or that the notice which he necessarily had of an act done by himself, was not equally notice to his clients, the defendants in error, as to his client, Miss Buchanan, the plaintiff in error. The counsel for the latter desire to state that, if he did make such an allegation concerning himself, such is their respect and esteem for him and such is their knowledge of his character, that they must refuse to credit the charge.

Also, therefore, when on pages 13 and 32, Miss Buchanan is accused of "lack of frankness" in her bill filed in the Maryland Court, and in her petitions filed in the Court of Claims, for not stating the date when her father joined the firm of S. Smith & Buchanan, it should be mentioned to the Court, that counsel for plaintiff in error here, who drew the bill, had no knowledge on the subject beyond the facts furnished by the petitions and findings and conclusions of the Court of Claims,

which petitions we have again to remark were drawn by Mr. Clark, one of the counsel for defendants in error here, and which findings and conclusions were made up in a case where he was in charge of the claimant's whole case, and presumably requested from the Court for her, the very findings which it made.

VII.

What remedy is there in any Court of law or equity for a person who alleges that a donation, purely gratuitous, was made to another person by mistake, but which that other person claims, was made to him with the most discriminating intention on the part of the donor. This is a statement of the whole case alleged by the defendants in error, reduced to its native simplicity. Is there any Court which can speak for the donor of such a gift, and declare that it was made under a mistake? From the very nature of the case, must not *the donor* be the *only tribunal* who can decide whether he made the donation to the wrong party under a mistaken belief? Therefore, is it not plain that, as a matter of natural justice, the only course by which such a controversy could be decided, is for the fund to be restored to the donor in question, before whom the two parties claiming to possess, each in his own person, the meritorious and moving cause of the gift, can appear and ask for the exercise of this grace in behalf of themselves respectively? Would there be any other way to find out whether Congress had intended, or should intend, to give the fund to one or the other of these two firms who are claiming here, than to restore it to Congress, who would hear the controversy by their own proper committee, and make the award to the firm that they chose to consider the more meritorious of the two claimants? We believe that upon a fair hearing of the equities of this case, as to where the suffering of these losses actually fell, Congress would again award the fund, as it has already awarded it, a one equal third share to the next of kin of William B. Buchanan.

Respectfully submitted,

ARCHIBALD H. TAYLOR,
E. P. KEECH, JR.,
JOHN PEIRCE BRUNS,
Attorneys for Plaintiffs in Error.

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Supreme Court U. S.
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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1902, No. 266.

ESTHER S. BUCHANAN ET AL.,
Plaintiffs in Error,

vs.

LAURA PATTERSON ET AL.,
Defendants in Error.

In Error to the Court of Appeals of Maryland.

SUPPLEMENTAL BRIEF OF PLAINTIFFS IN ERROR.

ARCHIBALD H. TAYLOR,
R. P. KEECH, JR.,
JOHN PEIRCE BRUNE,
For Plaintiffs in Error.

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SUPPLEMENTAL BRIEF OF PLAINTIFFS IN ERROR.

I.

THE CASE OF ANGLE VS. RAILWAY COMPANIES, 151 U. S. PAGE 1, REINFORCED BY FARMERS LOAN AND TRUST COMPANY VS. RAILWAY COMPANIES, 163 U. S., PAGE 31, EXPRESSLY REAFFIRMS THE RULE IN FLETCHER VS. PECK, 6 CRANCH, 87, THAT A THIRD PARTY CANNOT WREST OR DIVERT A LEGISLATIVE GRANT, AND MUCH LESS A LEGISLATIVE DONATION, TO ANY OTHERS THAN THE DESIGNATED GRANTEE OR DONEE.

The first-mentioned case is upon none of the briefs, and was handed by counsel for defendants in error to counsel for plaintiffs in error after arriving in this Court. To distinguish it

from the case at bar is probably a superfluous duty. It arose upon demurrer and the conceded facts were, that Angle, the plaintiff, had partially, if not substantially, earned the right to certain lands granted by the State of Wisconsin, for a consideration, to the Portgage Company, when the Omaha Company acquired or absorbed the Portgage Company bodily, by buying up all its capital stock and all its officers, caused the latter company fraudulently to break its contract with Angle, and fraudulently to relinquish its rights to its lands to the State, which at the instance of the conspirators controlling the Omaha and Portgage Companies in pursuance of the scheme of fraud, were then granted to the Omaha Company,

Angle secured a judgment for the wrong done him against the Portgage Company, and filed his bill thereon against the Omaha Company, to subject the lands and other assets thus fraudulently acquired by it from the Portage Company.

Said the Court in effect: The wrongs were done Angle and his claim accrued thereon against the Omaha and Portage Companies before the Legislature revoked its grant. The Omaha Company has become practically the Portage Company by the absorption of all its capital stock (as has been expressly decided in Maryland), and it must respond to its creditors, and account for its assets, whether eloigned or re-obtained, via. the Legislature.

It was analagous to subjecting an after-acquired title to make good a liability with respect to a former defective one.

It must be observed, that the Court in that case was dealing with property-rights actually vested, and actual frauds concerning the same, between the parties, not as here, with gratuities, which are never property rights, except in the very person of the designated donee, and where no charge of fraud has been suggested by the record. And the Court delivering its opinion by Mr. Justice Brewer, particularly quoted and re-affirmed the opinion of Chief Justice Marshall in Fletcher vs. Peck, 6 Cranch, that title given by the Legislature cannot be collaterally challenged by a third party, and for itself said, that "it

would not be seemly for either of the three departments to be instituting an inquiry as to whether another acted *wisely, intelligently* or *corruptly*."

And when this case was tried on the merits, it maintained the title of the Omaha Company to the lands in question, saying that "whatever the Legislature might thereafter do in its behalf, was an act of grace."

See—Angle vs. Railway Companies, 151 U. S. page 19.
Farmers L. & T. Co. vs. Railway Companies, 163 U. S. 47.

II.

THE EXPRESS TERMS OF THE ACT MAKING THESE APPROPRIATIONS, PRECLUDE ALL POSSIBILITY THAT THE NEXT OF KIN OF ANY OTHER PERSONS THAN THE INTESTATE EXPRESSLY DESIGNATED IN THE ACT, CAN CLAIM THE SUMS GIVEN BY THE ACT TO THE ADMINISTRATOR OF SUCH INTESTATE NAMED THEREIN, IN ANY PLACE, OR IN ANY COURT, THEREAFTER.

The Court of Appeals of Maryland suggested, when considering the language of this Court in Blagge vs. Balch, that after the Court of Claims had made its advisory report to Congress "Congress might confide the money to the administrators, trusting that they and the Courts of which they were officers or agents will distribute the fund among the next of kin of the original claimants," and that this imposed upon such Court the duty of determining who were the original claimants, and such Court was perfectly free to determine that such claimants were others than the next of kin of the intestate named in the Act, and the representative of the intestate named in the Act could thus be treated as a mere trustee for persons other than the next of kin of his intestate.

Certainly the language of Blagge vs. Balch, never meant to intimate, that the Courts so "*trusted*" would distribute the funds among others than the next of kin of the claimants designated as the true or original claimants by the terms of the Act of Appropriation. This becomes as clear as crystal upon

a glance at the terms of the Act of Appropriation, from the provision that the award "shall not be paid until the Court of Claims shall certify to the Secretary of the Treasury that the personal representatives on whose behalf the award is made, represent the next of kin."

Now if the several Courts of the States were at liberty thereafter to determine who were the original sufferers entitled to be reimbursed for these losses, how would it be possible for the Court of Claims to give the certificate "that the personal representative on whose behalf the award was made represented the next of kin." Next of kin of whom? Of unknown persons yet to be discovered, ascertained, and designated by the Courts of the several States? Clearly, it would be impossible for the Court of Claims to perform this duty, whose performance has been declared by this Court to be "final and conclusive," unless the particular persons to whose next of kin Congress intended and desired to give this money, had already been ascertained or designated by the Act of Appropriation. The provision requiring this certificate is conceded to be made for the purpose of preventing this money from being diverted, by proceedings in Court or any other proceedings whatsoever, from the next of kin of those persons whom the Act has thus designated, necessarily as the original sufferers, to the next of kin of any other persons whatsoever.

In a word, does not this provision mean, that if the Act of Appropriation gives the award to the administrator of A, the Court of Claims must give a certificate that will insure its distribution to the next of kin of A, and not to the next of kin of B, C, D or any other person whatsoever, who may hereafter set up a claim, more meritorious than that of A, in the opinion of a State Court trying such question at some time thereafter?

ARCHIBALD H. TAYLOR,
E. P. KEECH, JR.,
JOHN PEIRCE BRUNS,
For Plaintiffs in Error.

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ESTHER S. BUCHANAN ET AL.

vs.

LAURA PATTERSON ET AL,

In Error to the Court of Appeals of Maryland.

Brief for Defendants in Error.

ARTHUR W. MACHEN,
ARTHUR W. MACHEN, JR.,
For Laura Patterson and others.
FRANK P. CLARK,
For Mary Coles Carter and Others.

ESTHER S. BUCHANAN
ET AL.

vs.

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IN THE

Supreme Court

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UNITED STATES.

OCTOBER TERM, 1902.

No. 266.

In Error to the Court of Appeals of Maryland.

BRIEF FOR DEFENDANTS IN ERROR.

STATEMENT.

In the latter part of the Eighteenth Century Samuel Smith and James A. Buchanan, of Baltimore, carried on an extensive business as co-partners under the firm name of S. Smith & Buchanan. In 1798 these partners, in common with many other citizens of the United States, sustained heavy losses from the illegal depredations by the French upon American commerce. The particular losses sustained by this firm arose from the seizure and condemnation as prize of the ships Patapsco and Jane and their cargoes. This firm of S. Smith & Buchanan owned a portion of the cargo of both vessels and a one-half interest in the Jane.

These sufferers and others in similar situation and their descendants claimed that by the effect of a subsequent treaty between the United States and France, whereby the United States for a consideration gave up their right to exact from France compensation to their citizens for these losses, the United States government assumed the obligation of responding for them. No action of Congress, however, was taken until, in the year 1885, an Act was passed authorizing the Court of Claims to inquire concerning the claims of such citizens of the United States as had valid claims for indemnity upon the French government arising out of illegal captures, &c., prior to the ratification of the convention between the United States and the French Republic, concluded September 30, 1800, and mutually ratified June 31, 1801. The Court of Claims was to examine into "the validity and amount of all claims included within the description above mentioned, together with their present ownership," and to report its conclusions of law and fact to Congress. The Act provided, however, that "such findings and report of the Court shall be merely advisory as to the law and facts found and shall not conclude either the claimant or Congress." This Act (23 Stat. at Large, page 283) is set forth in the Record, pages 46, 47.

In 1891 an Act was passed for the payment of those claims which down to that time had been reported upon favorably by the Court of Claims. (26 Stat. at Large, ch. 540, pages 862, 897, 908.) And an Act approved March 3, 1899 (30 Stat. at Large, page 1161, *et seq.*), provided for the payment of other claims which in the meantime had received the approval of the Court of Claims. It is this latter Act which made the appropriations for the claim of S. Smith & Buchanan, and furnished the fund which the Court below, a Court of Equity, was asked to distribute in this case. (Extracts from the Act appear in Record, pages 94–96.) These extracts were selected by counsel for plaintiffs in error without consultation with counsel for the defendants in error, and are printed without any indication that some portions of the

Act are omitted. Reference is, therefore, made to the Act as printed in the Statutes at Large.

The construction of the Act of 1891, which first made an appropriation for claims of this class, was fixed by this Court in Blagge vs. Balch, 162 U. S. 439, where the following propositions were laid down.

1. That under the Act of 1891 the payment was directed by Congress as a gift or gratuity to the next of kin of the original sufferers living at the date of the appropriation, and not in the discharge of any obligation of the United States to the estates of the original sufferers.

2. That the fund should therefore not be distributed to creditors nor to legatees or other assignees, but in all cases *to the next of kin of the original sufferers.*

3. That "Congress in order to reach the next of kin of the original sufferers, capable of taking at the time of distribution, on principles universally accepted as most just and equitable, intended the next of kin according to the Statutes of Distribution of the States of domicil of the original sufferers." 162 U. S. 464.

The general enactments of the Act of Congress of 1891, ch. 540, 1 Sup. to Rev. Stats. of United States, page 925, which were construed by this Court in Blagge vs. Balch, *supra*, are repeated word for word in the Act of 1899, ch. 30, 30 United States Stat. at Large, 1161, *et seq.*, which also contains a further express declaration—not found in the Act of 1899—which is in these words: "Provided, however, that any French spoliation claim appropriated for in this Act, shall not be paid if held by assignment or owned by any insurance company." (Record, page 96, 30 U. S. Stat. at Large, page 1205.)

Therefore, the construction given by this Court to the Act of 1891, in *Blagge* vs. *Balch*, *supra*, is not merely acquiesced in, but is confirmed and emphasized by this positive prohibition of any payment under the Act to any one claiming under any kind of assignment.

As already stated, the losses in this case were sustained in the year 1798 by the firm of S. Smith & Buchanan, so that those who *at that time* were partners in the firm were of course the original sufferers; and the evidence shows, and the Maryland Courts so found, that this firm then consisted of Samuel Smith and James A. Buchanan. Upon them the loss originally fell. Any person who afterwards became a partner in the house could only derive an interest in the claim by assignment, if at all; he was not and could not be an original sufferer. The next of kin, therefore, of Samuel Smith and James A. Buchanan who were living on March 3, 1899, are equitably entitled to the fund now in the hands of the plaintiff in error, Miss Buchanan, according to the rule laid down by this Court.

But it appears that William B. Buchanan, a son of the James A. Buchanan who, as just stated, was one of the original sufferers, was admitted into the firm of S. Smith & Buchanan in 1818, about 20 years after the losses occurred. He outlived his father and Samuel Smith; and, through a mistake, Miss Esther S. Buchanan, nominally as his administratrix, was allowed to prosecute the claim of S. Smith & Buchanan before the Court of Claims under the Act of 1885, and to collect the money under the Act of 1899. It is contended on behalf of the plaintiffs in error, Miss Esther S. Buchanan and a brother of hers, who are the two children of William B. Buchanan, that by reason of this mistake the distribution should be made on the theory that William B. Buchanan, who was an infant only three years old when the French captures were made, and who was not admitted into the firm until nearly twenty years later, must nevertheless be treated as if he had been an original sufferer and had owned a full third interest in the firm at the time of the losses. The plaintiffs in error, it will be noticed, also claim to stand among the next of kin of James A. Buchanan, one of the two original sufferers, being grandchildren of his; and the decree, which is now the subject of review, awards to them their full shares as such. Not content, however, with

this, their contention is that one-third of the entire fund should be allotted exclusively to them as next of kin of their father, William B. Buchanan—a contention as injurious and inequitable in regard to the other next of kin of the said James A. Buchanan, as it is in regard to the next of kin of Samuel Smith, the other original sufferer. We submit that this contention is as unfounded in law as it is plainly opposed to equity and good morals.

The suit in which this writ of error is taken was begun by a bill in equity filed in the Circuit Court Number Two of Baltimore City—a Court of exclusively equitable jurisdiction—by Esther S. Buchanan individually, Esther S. Buchanan administratrix of William B. Buchanan, and Esther S. Buchanan, administratrix of James A. Buchanan, against the other next of kin of James A. Buchanan, (including of course Wilson C. Buchanan, who together with the plaintiff constituted the next of kin of William B. Buchanan) and against the next of kin of Samuel Smith. The bill set forth the fact of the losses in question and the legislation above referred to respecting French Spoliation Claims. It did not disclose the date on which William B. Buchanan was admitted into the firm. The prayer for relief was:

> "1. That this Honorable Court will assume jurisdiction of the fund in the hands of your oratrix as administratrix as herein set forth, and that it will direct and supervise the distribution of the same among the parties whom the Court may find to be entitled to participate therein, according to the proportion and rule which this Court may declare to govern the same."
>
> "2. And for such other further relief, etc." (Record, page 16.)

A decree *pro confesso* was entered against Wilson C. Buchanan and certain other defendants for failure to appear. (Record, page 24.) The remaining defendants answered the bill of complaint, and by their amended answers alleged

that William B. Buchanan was not an original sufferer, and claimed that, therefore, his next of kin were not, as such, entitled to participate in the fund. (Record, pages 28, 31.) Testimony in support of the allegation, of the amended answers was then taken.

The Circuit Court No. 2 decided, however, at this hearing, that because of the error by which Esther S. Buchanan prosecuted the claim nominally as administratrix of William B. Buchanan, the latter must be treated as if he had been an original sufferer and had had an equal interest in the firm with Samuel Smith and James A. Buchanan. (Record, page 91.) This decree was reversed by the Court of Appeals of Maryland on appeals taken by certain of the present defendants in error; and the cause was remanded to the Circuit Court No. 2 for further proceedings in conformity with the opinion of said appellate Court. The opinion of the Court of Appeals will be found in the Record, pages 97-103, and is reported in 92 Md. 334.

A decree in conformity with this opinion was then passed by the Circuit Court No. 2, distributing the fund to the next of kin of those persons who were in fact the original sufferers, namely, Samuel Smith and James A. Buchanan, that is to say, one-half to the next of kin of said Samuel Smith, and the other half to the next of kin of said James A. Buchanan. (Record, pages 108-109). From this decree the plaintiffs in error appealed to the Court of Appeals, which adhered to its former opinion, and affirmed the decree appealed from. (Record, pages 113-117). From this second decision of the Court of Appeals, the present writ of error is sued out by the said Esther S. Buchanan and Wilson C. Buchanan, her brother.

Points.

I.

The fact is undeniable that the claim which Congress intended to recognize was that based on the *losses* sustained

by the owners of the vessel and goods captured and condemned in 1798. This is shown by the Act of 1899 itself, which classes together all claims, by whomsoever owned, arising out of the capture of the same vessel. Thus, on the ship Jane, claims represented respectively by Esther S. Buchanan, administratrix, by Cumberland D. Hollins, administrator, and by William Donnell, administrator *d. b. n., c. t. a.*, were consecutively appropriated for, although in other parts of the same Act appropriations were made to the same persons in respect of losses sustained by the capture of other vessels. In other words, the claims are identified rather by the vessels from whose capture they arose than by the ownership of the claims themselves. The money which is now in Court represents one undivided half of the ship Jane and a portion of her cargo, and a portion of the cargo of the ship Patapsco. These belonged to Samuel Smith and James A. Buchanan, co-partners trading as S. Smith & Buchanan; who necessarily were alone the original sufferers.

It is equally certain that Congress meant that in all cases provided for in the appropriations for French Spoliation claims the money should finally go to the next of kin of the original sufferers, efflux of time having removed all the original claimants themselves. It was obviously necessary for convenience that some individual should in each case act as the representative of these next of kin, and be the hand to receive the money. What official character he might sustain outside was of little importance if in point of fact he represented the next of kin, and so as agent or trustee would faithfully distribute the money among them.

And, in order to guard against the abuse of the position or improper diversion of the gifts from the intended beneficiaries, Congress provided that the money awarded to any claimant upon the claim he represented should not be paid to him until he had furnished evidence satisfactory to the Court of Claims that he in fact represented the next of kin of the original sufferers, which precaution shows plainly what direction the money was designed to take. If, by

mistake or fraud, a misrepresentation is made in any case, the only effect is a failure in the practical application of the precautionary measure; the trust is not affected by the error; the recipient of the fund takes it clothed with the trust, just as an executor *de son tort* or guardian *de son tort*, or other person improperly coming into possession of trust property, is compelled in equity to execute the trust. To deprive the real next of kin of the original sufferers of the bounty of Congress because the fiduciary had by mistake, fraud or misrepresentation obtained from the Court of Claims a certificate that he represented them, the decision of the Court of Claims being wholly *ex parte* and without notice to the beneficiaries, would convert a provision designed by Congress for the protection of the next of kin into the instrument of their undoing.

The main object in the conduct of the proceeding next to the establishment of the claim itself, including the fact of loss, is to be reasonably sure that the formal claimant, whatever official character he may possess as administrator of this or that decedent, really represents the intended next of kin—has *their authority* to prosecute the claim.

If there be no want of this essential ingredient but only an *irregularity* as to the official character of the claimant, the Court of Claims has repeatedly shown their indisposition to attach importance to it. The existence of a good understanding between the *cestuis que trustent* and the claimant makes it unimportant how he is described or what office he may hold. Thus, although the claimant appears as executor, or administrator *cum testamento annexo*, of the original sufferer—which office would, apparently, require him to apply the money in accordance with the will of his testator and pay it to legatees—the money nevertheless is given to him in confidence that he will distribute it as the Act of Congress intends, to the next of kin.

Blagge vs. Balch, 162 U. S. 461.

Indeed, the statement of the claimant's official character must in the Act of appropriation be treated rather as a *designatio personae* than as an indication of the character in which he is to receive this money. For, however he be described, or whatever office he hold, he takes as the trustee of Congress, upon trust to carry out its intention. This is clearly shown by the case of an administrator with will annexed, to which reference has already been made, and which was before this Court in Blagge vs. Balch, *supra*.

In a case in the Court of Claims where an Assignee in Bankruptcy had filed the claim, and the Act of 1891 had made it evident that he could not recover, the administrator, who was then unable to file a claim *de novo*—being barred by the expiration of the statutory period of limitations—was permitted by the Court of Claims, (the original petitioner, the Assignee, consenting) to be substituted as claimant in place of the latter. There, the position of the Assignee was directly adverse to any assertion of right on the part of the next of kin; and yet, the claim itself being the same, and having been duly established by proof of loss, and the failure of the administrator originally to intervene being an innocent one, founded on an expectation of recognition by Congress of a legal validity of assignments of the claim, the amendment was allowed.

Ship Concord, 27 Court of Claims, 142.

In another case, the circumstances of which were so like those of the present one, as to make the two cases undistinguishable, a mercantile firm of David Stewart & Sons, consisting of David Stewart, David C. Stewart and John Stewart, owned a vessel named the Clio, which was captured and condemned by the French in 1796. William P. Stewart, a son of the senior partner, was admitted into the firm in the year 1802, and became the last surviving member of the firm as so changed. *His* administrator filed the claim on behalf of the firm of David Stewart & Sons. Before the award was made, the fact that William P.

Stewart was not a partner in 1796 having been ascertained, and coming to the knowledge of the counsel representing the government, the irregularity was brought under the consideration of the Court, who held that, as it appeared that the administrator of William P. Stewart in fact represented the next of kin of David Stewart, David C. Stewart and John Stewart, the original claimants or sufferers, and that he prosecuted the claim with their knowledge and at their request, the technical error of making him claimant as administrator of William P. Stewart, the son subsequently admitted into the firm, did not preclude the Court from rendering a decision upon the merits and reporting the case to Congress.

Brig Clio, John Stewart, Admr., vs. The United States, 27 Court of Claims Rep. 221.

An appropriation was accordingly made to "John Stewart, administrator of William P. Stewart" by an Act of 1902, Sess. I, ch. 887, in precisely the same terms as the Act of 1899, now under consideration. When that fund came to be distributed, could it have been for a moment contended that William P. Stewart was to be treated as if he had been a member of the firm when the losses occurred? The plaintiffs in error, not denying the force of this reasoning, attempted in the Court below to distinguish the Stewart case on the ground that William P. Stewart, whose administrator prosecuted the claim, had died without issue so that his next of kin would be the same as those of his father and elder brothers. But they would be *collateral* relatives of William and lineal descendants of his father, and in Maryland (where the Stewarts resided) lineal descendants take strictly *per stirpes* indefinitely, while in the case of collaterals more remote than nephews and nieces the distribution is *per capita* among those in equal degree and *no representation is allowed.* McComas vs. Amos, 29 Md. 120. Hence, if one-fourth of that fund were to be diverted to the next of kin of William P. Stewart consequences almost as serious

would follow as would result from sustaining the contention of the plaintiffs in error in the case at bar.

The evidence in the present case to show that Miss Esther S. Buchanan prosecuted the claim with the full consent and authority of all the next of kin, both of Samuel Smith and James A. Buchanan, is quite as satisfactory as the evidence in the Stewart case as to the authority of William P. Stewart from all the Stewart next of kin. To review the evidence establishing this fact is unnecessary, since the Court of Appeals has so found; and this conclusion, being a finding of fact by the State Court of last resort, is of course beyond dispute on this writ of error.

Egan vs. Hart, 165 U. S. 188.
Bement vs. Nat. Harrow Co., 186 U. S. 83.

The Court of Appeals of Maryland, speaking by Fowler, J., said in its opinion in the present case:

> "The mere fact that the claim was filed by the plaintiff in her name and as administratrix, etc., is immaterial. *The whole record shows beyond question that she represented with their consent all the parties who are now claiming against her.*" (Record, page 99.)

II.

1. The contention of the plaintiffs in error that the decision of the Court of Claims estops us from denying that William B. Buchanan was a member of the firm at the time of the losses, is not merely inconsistent with the principles and authorities above adverted to, but also, we submit, rests upon an entire misconception of the nature of that tribunal's jurisdiction in French Spoliation Cases and of the proceedings which took place in this cause.

It will be remembered that the Act of 1885, which is the foundation of the jurisdiction of the Court of Claims in these cases, expressly provides that "the findings and report of the Court shall be taken to be merely advisory as

to the law and facts found, and shall not conclude either the claimant or Congress." The quality of finality, the very basis of the doctrines of *res judicata* and estoppel by judgment, was therefore wholly lacking. As the Court of Claims itself has said: "There is no judgment, and *no element of a judgment.*" The Industry, 26 Ct. of Cl. 290.

See also—Buchanan, Admr., vs. U. S., 24 Court of Claims, page 81.
Brig Hiram, 24 Court of Claims, page 31.
Ship Concord, 27 Court of Claims, page 142.
Ship Theresa, 28 Court of Claims, page 326.
Ship Eliza, 28 Court of Claims, page 482.
Ship George, 25 Court of Claims, page 110.

In the nature things, no subsequent Act of Congress could give to that proceeding *judicial* qualities which it did not have at that time. Under a constitutional government, legislative power cannot reach to such an extent. Congress, however, attempted no such thing. An Act was passed appropriating money to pay certain findings of the Court of Claims subject to certain conditions; and that is all.

2. The objection of *estoppel* set up against the equitable right of the next of kin of Samuel Smith and James A. Buchanan to the indemnification money awarded on account of the spoliation of their property is wholly out of place on another ground. Estoppel by judgment or verdict presupposes a former suit to which the present contestants were parties on opposite sides, an issue distinctly made upon some matter of fact between them, a trial involving such issue by a tribunal competent to pass conclusively upon it, and a decision rendered thereon.

Who, then, were parties to the former cases in the Court of Claims?

The proceedings in respect to S. Smith & Buchanan's interest in the ship Jane and her cargo were begun by a petition filed by Miss Esther S. Buchanan against the United

States. (Record, pages 48, 49). She and the United States were the only parties to the suit. To be sure, the case was argued in conjunction with other cases relating to the same vessel and her cargo, in one of which Robert Carter Smith, administrator of Samuel Smith, who had owned individually a portion of the cargo, was the claimant. This joint hearing was, however, merely for convenience' sake, since necessarily the liability of the government for all claims arising out of the capture of one vessel would turn upon the same questions. The causes were not consolidated, nor was Samuel Smith's administrator made a party to Miss Buchanan's suit. The petition of Esther S. Buchanan stated that the loss was suffered by the firm of S. Smith & Buchanan in 1798, and that William B. Buchanan was "survivor of the firm of S. Smith & Buchanan."

In the case of the cargo of the Patapsco, a joint petition was filed against the United States by Esther S. Buchanan, William Donnell, Jane G. Howard, Susan Hoffman and Cumberland D. Hollins. (Record, pages 55-57.) It alleged that the petitioner Esther S. Buchanan had been appointed administratrix of William B. Buchanan, that "said William B. Buchanan was the surviving partner of the firm of S. Smith & Buchanan, all citizens of the United States," and that the loss was sustained in 1798 by the firm of S. Smith & Buchanan. This case was also for like reasons of convenience argued with the other cases arising out of the capture of this vessel. In one of these latter cases the administrator of James A. Buchanan, who owned individually a share in the vessel, was claimant. All of the claimants in these several cases were represented by the same counsel.

Neither petition of Miss Buchanan disclosed the date of William B. Buchanan's admission into the firm, or the names of the several partners who in 1798 composed it, and neither averred in terms that William B. Buchanan was a partner at that time.

Thus it clearly appears that neither the administrator of Samuel Smith nor of James A. Buchanan was party to either of the cases in the Court of Claims. That Court could not, if it had so desired, have made an award in favor of the administrator of James A. Buchanan, upon the claims upon which the awards were made in favor of Esther S. Buchanan. According to the provisions of the Act of Congress and the practice under it, each claim or petition stood to itself. As respects the claims represented by Miss Esther S. Buchanan, only an amendment which included the substitution of James A. Buchanan's administrator in her place, with the striking out of her name, could have opened a way for an award in his favor. Hence, as the cases stood, the Court not only did not, but could not, pass upon the question whether Miss Esther S. Buchanan or the administrator of James A. Buchanan was the better entitled in point of actual authority or of official position to prosecute those claims.

As already stated, none of the defendants in error were parties to the cases in the Court of Claims. Miss Esther S. Buchanan, it is true, was their *representative*, and prosecuted the partnership claims with their consent. This was in accordance with the requirement of the Act of Congress in this respect, a requirement of a representation not proved by any mere official appointment as administrator. (See Blagge vs. Balch, 162 U. S., 461.) In regard to this *substantially* representative character, the administrator of James A. Buchanan, did not represent the next of kin of Smith & Buchanan. As to the claim for the loss of James A. Buchanan's individual property, which consisted of a share in the ship Patapsco, he did represent James A. Buchanan's next of kin, but he did not represent even them as to any interest which their ancestor had possessed in the partership property.

Miss Esther S. Buchanan being the representative of all the next of kin, including the appellants, so that the entire proceeding was conducted by her for the common benefit of all concerned in the recovery of the claim, there was no

room for an issue between any of the next kin, either of Samuel Smith or of James A. Buchanan, and herself, as to any fact affecting the distribution of the money after its recovery.

3. Now, it is elementary law that no estoppel can exist in any case unless it clearly appears that the matter was actually in issue and decided. As said by Mr. Smith: "It need hardly be remarked that the effect of verdicts, whether upon parties or privies, altogether depends upon the question *whether the same point was in issue.* A verdict between two parties upon one question can, of course, have no binding effect in an issue joined between them or another. Nor will the verdict be admissible, unless it appears clear that the same point actually *was* in issue. It is not sufficient that it might have been so."

2 Smith Lead. Cas, 500, marg. Note to Doe vs. Oliver.

And see—Russell vs. Place, 106 U. S, 606, 608.

That no question whether William B. Buchanan was a member of the firm in 1798 or whether his administratrix or the administrator of James A. Buchanan was technically the proper party complainant was raised or suggested by the pleadings in the Court of Claims sufficiently appears from the analysis of Miss Buchanan's petitions which has already been given. It appears with even greater distinctness from the very findings of the Court in the case of the Jane.

Thus, the second finding (Record, page 81) states that the Jane was "owned by John Hollins, of Baltimore, one-half, and by Samuel Smith and James A. Buchanan, of Baltimore, one-half," and the fifth finding (Record, page 82) states that "the firm of S. Smith & Buchanan were the owners of one-half of the vessel," so that the two findings taken together show that William B. Buchanan could not at that time have been a member of the firm, which must have consisted of Samuel Smith & James A. Buchanan. Yet the eleventh find-

ing in the same case (Record, page 83) states that "William B. Buchanan was the surviving partner of the firm of S. Smith & Buchanan * * * and the same person who was an owner of the Jane and her cargo in 1798." Yet the Court had found that William B. Buchanan was *not* one of the owners of the Jane!

Such an inconsistency, patent on the face of the findings, shows conclusively that no question was made as to whether Miss Buchanan was technically the proper claimant or whether William B. Buchanan was a member of the firm in 1798. Obviously no necessity was felt to be exact in detail. And it is to be borne in mind that as William B. Buchanan was a son of James A. Buchanan, one of the original owners and sufferers, his children, including Miss Buchanan, were among James A. Buchanan's next of kin; also, that whether an administrator of William B. Buchanan or an administrator of James A. Buchanan appeared as claimant and received the money, it would not be distributed as assets of the estate of such decedent, but must go wholly to next of kin, and these were to include not only the next of kin of the Buchanan member of the firm, but next of kin of Samuel Smith also. The matter of substance was the establishment and collection of the claim. Whose should be the hand to receive it was of secondary importance.

From the whole it appears that no inquiry was judicially made into the question who constituted the firm of S. Smith and Buchanan in 1798, which firm, as was established by the evidence had a valid claim against the French Republic at the time of the making of the treaty in 1801. That Miss Esther S. Buchanan in fact represented the next kin of those who as members of the firm were the original sufferers and claimants against the French Republic was admitted. And the money was paid to her for distribution accordingly. It was supposed that William B. Buchanan was a member of that firm; yet according to the practice of the Court of Claims that error and the consequent informality were of no moment. If the mistake had been discovered,

and if counsel had thought it worth while to ask an amendment, the administrator or administratrix of James A. Buchanan might have been substituted for the administratrix of William B. Buchanan, or, as in the Stewart case (*supra*, pages 9, 10) the error might have been treated as wholly immaterial inasmuch as, whatever her official position, Miss Buchanan had in fact the authority of all the next of kin of the original sufferers to prosecute the claim on their behalf.

That Congress by the Act of 1899 made an appropriation on the recommendation of the Court of Claims, could not in any event give the findings of that body any greater scope than they were designed to have by that Court itself; and we already have seen that it never passed upon the question whether or not the administrator of James A. Buchanan had a better right than the administrator of William B. Buchanan to prosecute the claim as formal claimant.

Moreover, Congress did not make the appropriation unconditionally. On the contrary, it attached the important proviso that in all cases the payment should be made for the benefit of the next of kin of the original sufferers; and, as this Court in *Blagge* vs. *Balch* expressly declared, it committed to the State Courts the duty of determining who constitute those next of kin. The proviso of course overrides anything in the findings which might be thought to favor the pretensions of any persons other than the next of kin of original sufferers.

III.

The plaintiffs in error also rely upon the certificates given by the Court of Claims to the Secretary of the Treasury, under the provisions of the Act of 1899, that the personal representative on whose behalf the award was made represented the next of kin, and contend that such a certificate is a final adjudication that William B. Buchanan, of whose estate Esther S. Buchanan is administratrix, was a member of the firm of S. Smith & Buchanan in 1798.

These certificates have, if possible, even fewer of the attributes of a judgment than the original findings. The application therefor was wholly *ex parte*, without any notice to the defendants in error and without any opportunity on their part to be heard. As we have said above, the object of requiring the certificate was to safeguard the rights of the next of kin of the original sufferers. Payment was to be made in most cases to personal representatives—executors or administrators—persons whose official station might seem to require them to distribute the money to creditors and legatees; and the ordinary administration bond would probably not cover such a fund coming to the fiduciary's hands, not as part of his decedent's estate, but upon a special trust, so that the rights of the beneficiaries might be jeopardized if the administrator should turn out to be dishonest For the protection, therefore, of the next of kin, two precau ions were directed by Congress. Firstly, the courts of probate granting the administrations, respectively, were to certify that the personal representatives had given adequate security "for the legal disbursement of the awards;" and, secondly, to make assurance double sure, the Court of Claims was to certify that the administrator, whose official status was never sufficient proof, did in fact represent the next of kin of the original sufferers. If by any fraud or unintentional misrepresentation, this certificate is procured from the Court of Claims by one whose official position was irregular or—what would be far more serious—by one who in fact did not really represent the intended beneficiaries, or if the similar certificate of the probate court was obtained by similar means, the only result would be, as stated in the earlier part of this brief, a failure of these precautionary measures. The ultimate disposition of the fund—the trust created by Congress—would not be affected. The only risk of the beneficiaries would be from having as trustee a person who did not actually represent them or who was not adequately bonded; and all this risk would be at an end when the fund is brought by the trustee herself into a court of equity for distribution.

Obviously, therefore, the certificate of the Court of Claims being intended for the benefit of the next of kin cannot effect them prejudicially.

This conclusion, clear on principle, is also supported by the authority of this Court in *United States vs. Gilliat*, 164 U. S. 42. In that case, it appeared that the administrator of John Gilliat, one of the three members of the firm of Gilliat & Taylor, which had suffered from French Spoliations, filed his claim under the Act of 1885, chapter 25, and that an appropriation was made in his favor by the Act of 1891, chapter 540. He, however, was unable to comply with the conditions precedent contained in that Act; and in 1894 a special Act was passed directing that the sum appropriated as above stated, should "be paid to the person or persons entitled to recover and receive the same, to be ascertained by the Court of Claims upon sufficient evidence and certified to the Secretary of the Treasury." The Court of Claims decided and certified that the administrator of Thomas Gilliat, another one of the three members of said firm of Gilliat & Taylor, the original sufferers, was entitled to receive one-third of the appropriation made for the payment of the whole partnership claim. The United States attempted to treat this certificate as a judgment, and appealed to the Supreme Court. This Court, however, dismissed the appeal, and held that the certificate under the special Act was no more a judgment than the original "findings" under the Act of 1885, chapter 25. Consequently, no appeal would lie. This decision, therefore, effectively disposes of the contention of the plaintiffs in error that the certificate of the Court of Claims to the Secretary of the Treasury is a judgment, conclusive by estoppel or otherwise.

The other side, disregarding both the actual decision and the reasoning of the Court, cite this Gilliat case, upon the ground that since no appeal would lie from the action of the Court of Claims in granting the certificate, therefore the certificate of the Court of Claims is a final judg-

ment, concluding not merely the parties to it but also the defendants in error who had no knowledge or notice of the proceeding. The *non sequitur* in this argument, is, we trust, apparent.

The plaintiffs in error, in support of their, as we think, unsound interpretation of the Gillait case, rely upon a passage from Mr. Justice Peckham's opinion, which they tear from its context. Said that learned judge: "Such certificate was to be final and conclusive." But final and conclusive upon whom, and for what purpose? A mere glance at the rest of the opinion shows. It was a final direction by the United States Government to its agent, the Secretary of the Treasury, that the money be paid. The whole controversy was between the United States and the claimant. No question of *private* right as to the proper distribution of the fund as between different private persons arose—a very important distinction as will shortly be shown. The whole *ratio decidendi* of the Court was that the certificate was not a judgment or judicial act, but a mere executive direction to the Treasury Department.

It should be observed, moreover, that the whole controversy in this Gilliat case was as to who should receive the money as trustee. Here no question of that kind arises. The defendants in error do not desire to oust Miss Buchanan from her office as trustee. They merely insist that she make a distribution to the proper *cestuis que trustent—to those intended by Congress.* In the Gilliat case there was no question as to the distribution of the fund; that was left to the State Courts. Moreover, the second award in the Gilliat case was made under a *special* Act, and it covered not the whole claim of the partnership, but only the third which would ultimately fall to the next of kin of the partner whose representative was the claimant in the Court of Claims.

It should not be inferrred, however, that the certificates of the Court of Claims in the present case, when properly construed, contain anything prejudicial to the defendants in error. The only jurisdiction of that Court was to certify

whether or not the personal representative to whom the appropriation was made did in fact represent and have the authority of the next of kin of the original sufferers. A certificate to the effect that the Esther S. Buchanan who was the administratrix of William B. Buchanan was authorized to collect the money by all the descendants both of Samuel Smith and James A. Buchanan would have been, as we have stated, perfectly in accord with the facts, and would be far from prejudicing our contentions.

An additional finding that Miss Buchanan represented the next of kin of William B. Buchanan, while superfluous, would also have been true, since all the next of kin of William B. Buchanan were among the next of kin of James A. Buchanan. As a matter of fact, in the case of the Jane, the Court of Claims certified that "said Esther S. Buchanan on whose behalf an appropriation or award was made by Act of March 3, 1899, * * * represents the next of kin of William B. Buchanan, the surviving member of the firm of Samuel Smith & Buchanan, deceased, the original owner of the claim." In so far as the Court certified that Miss Buchanan represented the next of kin of William B. Buchanan, to wit., herself and her brother, the finding was warranted by the facts; but the Court ought to have gone further and certified that she represented the other next of kin of James A. Buchanan and also those of Samuel Smith. Had the Government objected, doubtless a more formal certificate would have been required as a condition to the payment of the appropriation. In so far as the Court of Claims is to be taken to have found by this rather ambiguous certificate that William B. Buchanan was an original owner of the claim, they manifestly exceeded the jurisdiction conferred upon them by the Act of 1899. In the case of the Patapsco, the certificate was similar in substance, though even more abbreviated and informal; and the foregoing remarks apply to it as well as to the certificate in the case of the Jane.

IV.

Finally, the whole question as to the functions of the Court of Claims in these cases and the effect to be given to its determinations is concluded by the authority of this Court in certain cases relating to the Alabama Claims. The legislation of Congress had established the Court of Commissioners of Alabama Claims with functions very similar to those exercised by the Court of Claims in these cases. One Taylor, who had previously gone into insolvency in a State Court, filed a claim in this Court of Commissioners and obtained a judgment for the amount of his losses from Confederate cruisers. This judgment having been paid to Taylor by the United States, Taylor died, and his assignee in insolvency, who, as the Alabama Claims passed to creditors and other assignees, was entitled to have obtained the award of the Court of Commissioners, brought an action for money had and received against Taylor's administratrix. It was urged that the decision of the Court of Commissioners in favor of Taylor was conclusive against his assignee; but the Supreme Court held that the award of the Court of Commissioners was conclusive as to the amount to be paid upon each claim, but not as to the party entitled to receive it, and that consequently the plaintiff might recover.

Butler vs. Gorrely, 146 U. S. 303.

In a previous case involving the same question, the Supreme Court had said:

> "The object for which the Court of Commissioners of Alabama Claims was established was to pass upon the claims which were presented to it for adjudication, and determine the amount to be paid by the United States on each claim. Questions respecting the ownership of the respective claims did not concern the Court. Its function was performed when it rendered its judgment on the merits of the claims. Its judgments were final upon all parties, as respects the validity of the claim, and the amount to be paid in satisfaction of it;

but there is nothing in the Acts of Congress relating to this matter, or in the reason of things, to indicate that the judgment of the Court, as to who were the owners of the respective claims submitted, should be considered final and irrevocable."

Williams vs. Heard, 140 U. S. 529, 539.

In these Alabama Claims Cases, it will be noticed, two points were determined: first, that the claims were assignable and therefore passed to assignees in bankruptcy or insolvency, and, second, that although the Court of Commissioners had rendered a judgment in favor of the original sufferer, the assignee could nevertheless recover from him the amount realized, since the judgment was not conclusive as to the persons entitled to receive the claim. It is the latter proposition that we now rely upon. The former is plainly inapplicable, since these French Spoliation Claims, as decided in *Blagge* vs. *Balch*, do not pass to assignees, legatees, or creditors. In every case of appropriation for claims against the United States, the first question to be determined is whether or not Congress has directed that assignments by will, by operation of law, or by act of the parties, be recognized. In Williams vs. Heard, *supra*, it was determined that the Alabama Claims were assignable; in Blagge vs. Balch, in deciding that French Spoliation Claims are not so, the appropriation being a mere gift to the next of kin, Mr. Chief Justice Fuller, said: "Manifestly, the claims involved in these cases do not come within the rule laid down in Comegys vs. Vasse, and Williams vs. Heard." Obviously, the learned judge referred to the ruling in those cases that the claims passed to assignees, and did not mean to deny the applicability of the other proposition of Williams vs. Heard—namely, that the decisions of the Court of Commissioners were not conclusive as to the party entitled to receive the award; for no question to which that rule might relate was then before this Court. The plaintiffs in error, we submit, in contending the contrary, disregard the whole purport of the reasoning of the Court.

We submit that the Alabama Claims Cases are direct authority in our favor; for certainly the *judgments* of the Court of Commissioners possessed a higher degree of finality than can attach to the "findings" of the Court of Claims in reference to French Spoliations.

United States vs. *Jordan*, 113 U. S. 418, relied upon by the plaintiffs in error, does not conflict with these principles. In that case, a claim having been made by one E. L. Jordan for the recovery of certain taxes alleged to have been illegally exacted, an Act of Congress was passed directing the payment of $2,290 to Jordan on account of this claim. The officials of the Treasury Department refused to pay the full $2,290 on the ground that some of the taxes in question had been legally paid; and Jordan brought suit against the United States in the Court of Claims. That Court, and the Supreme Court on appeal, held that such a question could not be opened, and that the plaintiff was entitled to recover. The Statute was mandatory, and left nothing to the Treasury Department except the ministerial act of paying the money. It was a simple case of an appropriation of a definite sum to a named individual. Moreover, the whole controversy was between the United States and the claimant. There was no question as to the proper distribution of the fund when paid—as to whether the payee would hold beneficially, or upon trust, and if so upon what trust. This Jordan case was followed by *United States* vs. *Louisville*, 169 U. S. 249, a precisely similar case, and one to which the foregoing remarks are, therefore, equally applicable.

This Court has, indeed, repeatedly held that the class of cases relied upon by the plaintiffs in error, where the question of the conclusiveness of acts judicial or *quasi* judicial by which money has been paid or title to land granted by the United States has been raised between the United States and the party to whom the money was paid or the land granted, have no application to a case like the present where the question arises in a Court of equitable jurisdiction between private parties, after the title has

passed from the government. Cases of that kind are U. S. vs. Bem Price, 116 U. S. 45; U. S. vs. Jordan, 113 U. S. 418; U. S. vs. Louisville, 169 U. S. 249; U. S. vs. Gilliat, 164 U. S. 46, cited by the plaintiffs in error. The radical distinction between such cases and a case like the present, was declared and applied by this Court in *Johnson* vs. *Towsley*, 13 Wall. 72, where the luminous opinion of the Court delivered by Justice Miller defines the grounds of the jurisdiction of Equity so clearly as to leave no room for doubt. There, with reference to the facts of the particular case which involved the effect of a decision of the Commissioner of the Land Office as to a certain grant, the opinion after adverting to "the general doctrine that when the law has confided to a special tribunal the authority to hear and determine certain matters arising in the course of its duties, the decision of that tribunal, within the scope of its authority, is conclusive upon all others," proceeds to say:

> "That the action of the land office in issuing a patent for any of the public land, subject to sale by pre-emption or otherwise, is conclusive of the legal title, must be admitted under the principle above stated, and in all Courts and in all forms of judicial proceedings, where this title must control, either by reason of the limited powers of the Court, or the essential character of the proceeding, no inquiry can be permitted into the circumstances under which it was obtained. On the other hand there has always existed in the Courts of Equity the power in certain classes of cases to inquire into and correct mistakes, injustice and wrong in both judicial and executive action, however solemn the power which the result of that action may assume, when it invades private rights; and by virtue of this power the final judgments of Courts of Law have been annulled or modified, and patents and other important instruments issuing from the crown, or other executive branch of the government, have been corrected

or declared void, or other relief granted. No reason is perceived why the action of the land office should constitute an exception to this principle."

13 Wall. 83, 84.

And a little later on, in the same opinion, the method of the exercise of this jurisdiction of equity is thus explained:

"And so, if for any other reason recognized by Courts of Equity, as a ground of interference in such cases, the legal title has passed from the United States to one party, when, in equity and good conscience, and by the laws which Congress has made on the subject, it ought to go to another, 'a Court of Equity will,' in the language of this Court in the case of Stark vs. Stars, (8 Wall. 402) just cited, 'convert him into a trustee of the true owner, and compel him to convey the legal title.'"

13 Wall. 85.

And see—Carpentier vs. Montgomery, 13 Wall. 480, 497.
Marquez vs. Frisbie, 101 U. S. 475.
Monroe Cattle Co. vs. Becker, 147 U. S. 47.
Turner vs. Sawyer, 150 U. S. 578.

VI.

The plaintiffs in error concede that Miss Buchanan does not hold the money exclusively for the benefit of the next of kin of her own decedent, William B. Buchanan, and they concede that it is permissible to cut down indefinitely William B. Buchanan's interest in the firm. That is to say, it is conceded, that if evidence to that effect were forthcoming the defendants in error might show that William B. Buchanan instead of owning, as the plaintiffs in error claim, a one-third interest, owned only a one-tenth, a one-hundredth, or one-thousandth interest, so that his next of kin would be entitled only to a one-tenth, a one-hundredth, or one-thousandth part of the money appropriated by Congress. But it is argued that if we go further and show that he had no interest whatever in the firm which suffered the losses,

then, as by a species of magic, he is presumed to own a full third, and must receive a full third of the appropriation. That is to say, if he had owned a one-thousandth interest in the firm, his next of kin would receive only a one-thousandth part of the fund; but since he owned no interest in the firm, his descendants must receive a full third. Nothing could show more clearly the unreasonableness, not to say absurdity, of the position of the plaintiffs in error.

The plaintiffs in error reach this curious result by starting with the legal presumption that the shares of partners are equal, and then arguing that as it is obviously impossible to produce evidence as to the extent of the interest in the firm of one whom the evidence incontrovertibly shows not to have been a member at all, the legal presumption must stand that he was an equal partner! But we respectfully submit that such jugglery in order to defeat a manifest equity although perhaps suited to the Middle Ages is wholly out of place in this, the twentieth century.

VII.

It has already been stated that any real interest which William B. Buchanan could be supposed to have had in these claims must have been based on some assignment made by the original sufferers to him. Not being an original sufferer, he never could have had any other ground of title or interest; and hence his claim, and that of those claiming under him as his next of kin, is expressly barred by the provisions of the Act of 1899.

But the evidence is far from showing that *any* assignment was ever made, or that these claims were transferred by the old firm to the new when William B. Buchanan was admitted as a member. A "statement of the affairs of S. Smith & Buchanan," (Record, page 87,) does show that certain "Claims on the French, the Dutch and the Neapolitan Governments" and a "Claim on Lima for Ship Clothier" were treated in 1821 as belonging to the firm as then constituted; but there is nothing to connect the claims there mentioned

with those which are the subject of this litigation. Indeed, it is clear that they are totally distinct; for in 1821 these "French Spoliation Claims" were no longer "Claims on the French Government," but on the United States Government. The sufferers from the French Spoliations had consistently contended that by the Act of the United States in the treaty of 1801, the French Government had been released from all liability, and that the United States had become liable in its stead. The claim was not in legal contemplation a claim against France, nor is it likely that S. Smith & Buchanan would have been willing to designate it as such.

The plaintiffs in error, upon the assumption that William B. Buchanan did acquire by assignment an interest in these claims, contend that, nevertheless, he was not *such* an assignee as is excluded by the Act of 1899. They imagine that the exclusion of assignees applies only to *speculative* assignees. Now, if William B. Buchanan ever did become an assignee of any part of this claim, there is no evidence to show that he did not acquire such interest for speculation. But the whole contention is baseless, for not merely are all assignees, whether speculative or not, expressly excluded by the Act of 1899, but, furthermore, the appropriation has been authoritatively held to be a gift or gratuity to the next of kin of the original sufferers. Legatees and creditors are certainly not assignees for purposes of speculation, yet they are cut out.

The plaintiffs in error cite a case of Adams v. U. S., 26 Ct. of Cl. Rep. 249. There an insurance broker, according to the business customs of those early days, was accustomed to effect policies of marine insurance, acting as the agent of both insurer and insured. While he incurred no legal liability on the policies, he yet regarded himself as under a moral obligation to see that all losses covered by policies negotiated through his office were promptly settled, and accordingly he was accustomed to pay all such losses himself, looking to the underwriters for reimbursement. He had effected insurance on certain vessels which were cap-

tured by the French; and he, as was his custom, promptly paid the losses. Shortly afterwards he, for a consideration, agreed with the underwriters, who were technically the original sufferers, to assume all liability on insurance which he had placed with them, and took an assignment of their French claims. The Court of Claims, treating this insurance broker as morally an original sufferer, reported the claim favorably. The decision was rendered prior to Blagge v. Balch, with which case much of the reasoning is inconsistent. But whatever view be taken of the peculiar circumstances of the Adams case, they are obviously not at all like those of the case at bar. Here, the interest of William B. Buchanan, if he ever acquired any in the claim, arose from a transfer made twenty years after the origin of the claim, and cannot by any possible construction be regarded as contemporaneous with the loss.

The Ship Galen, 37 Ct. of Cl. Rep. 92, which is also cited by the other side does not bear out their contention. There, the original sufferer assigned his claims to his grandson in consideration of one dollar and of love and affection; and by his will appointed the same grandchild as his executor. The Court of Claims reported favorably upon a claim represented by such grandson as executor; but they did not decide that this assignment was effective, as the plaintiffs in error erroneously state. The Court simply reported the fact of the assignment to Congress, just as in S. Smith and Buchanan's case, they reported the assignment to Ellicott and Meredith, trustees for the benefit of creditors. Moreover, that claim has not yet been appropriated, for so that it is impossible to predict what disposition may be made of it by Congress.

VIII.

Moreover, the whole case of the plaintiffs in error depends upon the unwarranted assumption that the three members of the firm in which William B. Buchanan was a partner contributed equally to its capital. It is true that in the absence

of proof of an agreement to the contrary the law presumes that partners intend to share in profits equally, but no case has been cited to show that partners are presumed to have contributed equally to the capital of the firm. Not only so, but it affirmatively appears that these very goods and vessels (or the resulting claims for indemnity) if they ever passed to the new firm on its formation in 1818 passed as capital contributed by Samuel Smith and the elder Buchanan, by whom they had previously been owned.

Now, upon the dissolution of a firm its capital is returned to those partners by whom it was contributed, irrespective of the proportions in which they might have been entitled to share in profits.

Shea vs. Donohue, 15 Lea, 160.
Livingston vs. Blanchard, 130 Mass. 341.
Baker vs. Safe Deposit Co., 90 Md. 744.

Hence, this indemnification money, representing capital, should be returned to those partners by whom the capital was contributed, viz., Samuel Smith and James A. Buchanan. This would be true even if it were assumed that the plaintiffs in error were correct in their contention that the rights of the parties must be judged as if the seizures by the French had occurred after 1818, when William B. Buchanan was taken into the firm by his father.

The other side refer to James A. Buchanan's affidavit (Record, pages 87, 88) that William B. Buchanan when admitted into the firm "enjoyed a competent independent estate of his own" as evidence that he contributed such estate to the capital of the partnership; but clearly the inference is unwarranted. William B. Buchanan's "independent estate," like all the individual property of a partner was liable for the debts of the firm, but it did not become partnership property. Moreover, nothing indicates that William B. Buchanan's "independent estate" was ever actually resorted to for payment of a single dollar of the partnership debts. Indeed, the "Statement of the Affairs

of S. Smith & Buchanan" (Record, page 85), discloses that, while the firm had suspended payment and, in mercantile language, failed, yet its assets exceeded its liabilities by over eighty thousand dollars. None of the partners except the elder Buchanan went into insolvency, and William B. Buchanan's "independent estate" probably remained intact, although of course his father would not have taken him into the firm if he had believed it to be in doubtful circumstances. At all events, the younger Buchanan contributed nothing to the firm's capital.

We may add that the descendants of Samuel Smith are far from admitting that William B. Buchanan, on his admission into the firm in 1819, was given a right to participate equally with his father and Samuel Smith in the profits of the business. On the contrary, it is more than probable that Samuel Smith continued to own a one-half interest, the two Buchanans together owning the remaining one-half interest. For, when a son of a junior partner, only 23 years of age, is taken into a pre-existing firm, is it reasonable to suppose that he is to share profits equally, not merely with his father, but with the senior partner?

IX.

From the foregoing it appears that any Federal question that may have been decided below was correctly decided. But for several reasons we think that the decision below is purely a matter of local law.

1. Even if the plaintiffs in error were *strictissimi juris* entitled to all that they ask, they could not obtain it unless their claim was properly set up in accordance with the procedure of the State Courts. Now in Maryland, in Courts of Equity, the practice of the English Court of Chancery in all its essential features still prevails. Miss Esther S. Buchanan, therefore, can obtain no relief not prayed for in her bill. Against her co-plaintiff in error, Wilson C. Buchanan, the bill was taken *pro confesso* (Record, page 24), so that his rights are measured by the same standard as his sister's,

and can rise no higher than hers. As already stated in this brief, the bill did not disclose the date on which William B. Buchanan became a member of the firm or suggest in any way the facts which make the contention of the plaintiff so inequitable. This lack of frankness in the plaintiff's bill would alone be sufficient to justify a court of conscience in overruling her contentions. But further than this, her prayer is "that *this* Honorable Court"—*i. e.*, the State Court—"will assume jurisdiction of the fund in the hands of your oratrix as administratrix as herein set forth and that it will direct and supervise the distribution of the same among the parties whom the Court"—again, the State Court—"may find to be entitled to participate therein according to the proportion and rule which this Court"—still, the State Court—"may declare to govern the same." The only other prayer is for "such other further relief, etc.,"—which at most is a prayer for general relief, and which by reason of its abbreviated form probably should not be accorded even that effect. Is it not evident that such prayers do not include the unconscionable claims set up on this writ of error? As said by the Court of Appeals: "To make the distribution in the manner now suggested by her (Miss Buchanan's) counsel on her behalf * * * *would not accord with the prayer of the bill.*" (Record, page 102.)

The decision below is, therefore, supported by this simple proposition in the law of equity procedure, that relief not prayed for cannot be granted; and consequently no Federal question was necessarily involved.

2. There can be no question—unless the authority of Blagge vs. Balch, 162 U. S. 439, were impeached—that the next of kin of the original sufferers are, under the French Spoliation Acts, the objects of the bounty of Congress.

The determination in Blagge vs. Balch, as expressed in the opinion of the Court delivered by Mr. Chief Justice Fuller, is:

"It appears to us that Congress intended that the next of kin should be the beneficiaries in every case; that the limitation is express; and that the creditors, legatees and assignees, all strangers to the blood are excluded." 162 U. S. 460.

The present Act of 1899, closely following the former Act of 1891 in other respects, makes the exclusion of creditors and assignees still more express by the added proviso.

In Blagge vs. Balch, the Court further determined by what law the next of kin are to be ascertained. The decision is expressed in the opinion in the following words:

"We are of opinion that Congress in order to reach the next of kin of the original sufferers capable of taking at the time of distribution, on principles universally accepted as most just and equitable, intended next of kin according to the statutes of distribution of the respective States of the domicile of the original sufferers."

162 U. S. 464.

In the present case the original sufferers were, as the evidence incontrovertibly shows, and has been adjudged by the Maryland Court of Appeals, Samuel Smith and James A. Buchanan, at the time of the seizures and condemnation copartners in business under the firm name of S. Smith & Buchanan, and domiciled in Maryland, of which State they were citizens.

These next of kin, therefore, are the persons to whom Congress intended the awarded fund to go. Otherwise than as their presumed actual representative, Miss Esther S. Buchanan had no standing in the Court of Claims when the claim was under consideration. Whatever her official character, as administrator or executor of either of those original sufferers, or other official character whatsoever, her right to represent the claim depended, not upon any such official character, but upon her being authorized by the next of kin—that is to say, those persons who by the decree of

the Maryland Court have been conclusively ascertained to be those next of kin.

Now, if under these circumstances, the person, so being really agent for the true beneficiaries, and who, in consequence thereof, has been paid the money awarded for the claim, should refuse to make distribution among those who were equitably entitled, the ground of the jurisdiction of the Court whose aid may be invoked to enforce performance of the duty is that doctrine of equity which affirms that whoever is clothed with a constructive trust arising out of the fact that he has obtained the possession of money to which the beneficiaries or *cestuis que trustent* are entitled, may be compelled to execute the trust.

Johnson vs. Towsley, 13 Wall. 85.

Here, to make the equitable case stronger, if possible, the *cestuis que trust* have not found it necessary to file a bill for the enforcement of the trust. The trustee herself has come into the Court of Equity, voluntarily submitted herself and the fund to the jurisdiction of the Court, and prayed that equity be done.

The question, therefore, naturally presents itself, was any Federal question really involved when the State Court of Equity, thus called upon to exercise a clear equity jurisdiction, did execute it? It would seem the answer should be in the negative, and that when the Maryland Court found who were the next of kin of the original sufferers and the proportions in which, according to the law of Maryland, the place of domicile, they were entitled to share, it simply acted under an ordinary head of equity jurisprudence.

Before the decision in Blagge vs. Balch authoritatively settled the construction of the Act of Congress and determined that only next of kin, and not parties claiming by assignment, are beneficially entitled, there was a real Federal question. But now there seems to be none, when the State Court has only followed and applied that decision, and for all the rest has simply exercised the ordinary jurisdiction of a Court of Equity.

3. Lastly, it should be borne in mind that, at the time of the appropriation and of the payment of the money out of the Treasury, Miss Buchanan was administratrix of James A. Buchanan as well as of William B. Buchanan. So, she filed the bill of complaint in this case in three capacities—individually, as administratrix of William B. Buchanan, and as administratrix of James A. Buchanan. If the rule of the Court of Claims, by which, where the original sufferers were partners at the time of the seizures, the administratrix of the surviving partner was recognized as, usually, the proper representative of the claim, could be deemed anything more than a mere directory rule of practice, then we submit that, Miss Buchanan filing the bill as administratrix of James A. Buchanan, the fund should be regarded by legal construction as then in her hands as such; as where a person coming into possession of chattels as executor *de son tort* subsequently becomes administrator *c. t. a.*

But in whatever character Miss Buchanan may have supposed herself to be the holder of the fund, or may by legal construction be regarded as holding it in the moment next preceding the filing of the bill, she by that act submitted it to the jurisdiction of the Court, to be distributed according to equity. What disposition could a Court of Equity possibly make of it other than that which by the opinion and decree of the Court of Appeals has been made?

For the State Court of Equity to have done otherwise would have been to act contrary to its nature, to turn itself into an instrument of wrong, to make the plaintiff the perpetrator, as agent for innocent and confiding parties, of a breach of faith, and convert the Court itself into an actor in a breach of trust. The bill, which submitted the fund to the Court's jurisdiction and asked it to make disposition of the money as it should deem equitable, presented no such contention as has been made in argument on behalf of the plaintiff. The Court assumed jurisdiction according to the

prayer of the bill, and has directed the distribution of the fund in the only manner possible to a Court of Equity.

Respectfully submitted,

ARTHUR W. MACHEN,
ARTHUR W. MACHEN, JR.,
For Laura Patterson and Others, Defendants in Error.

FRANK P. CLARK,
For Mary Coles Carter and Others, Defendants in Error.

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Supplemental Brief for Defendants in Error

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1902, No. 266.

ESTHER S. BUCHANAN ET AL.

vs.

LAURA PATTERSON ET AL.

In Error to the Court of Appeals of Maryland.

Supplemental Brief for Defendants in Error,
Filed by Special Leave of the Court.

ARTHUR W. MACHEN,
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FRANK P. CLARK,
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ESTHER S. BUCHANAN	IN THE
ET AL.	Supreme Court
vs.	OF THE
	UNITED STATES.
LAURA PATTERSON	OCTOBER TERM, 1902.
ET AL.	No. 266.

—o—

In Error to the Court of Appeals of Maryland.

—o—

SUPPLEMENTAL BRIEF FOR DEFENDANTS IN ERROR.

I.

Did the Court of Claims, as the Plaintiffs in Error say, **determine that William B. Buchanan, upon or after being admitted into the firm, acquired an interest in the French Spoliation claims by Assignment ?**

The Acts of January 20, 1885, March 3, 1891, and March 3, 1899, taken together, show clearly that the persons whom Congress intended to benefit were the next of kin of those citizens of the United States who prior to the ratification of the convention with the French republic of 30th September, 1800, the ratifications of which were exchanged on the 31st

day of July, 1801, had valid claims of indemnity upon the French government arising out of illegal capture, etc. (For Act of 1885, see Record, page 46.) The proceedings in evidence show that the Court of Claims ascertained that a copartnership, existing prior to the said 30th day of July, 1801, under the name of S. Smith & Buchanan, had before the date mentioned (31st July, 1801), valid claims for certain property of theirs captured by the French. And when the Court of Claims returned the findings upon which the appropriations in question were made in the Act of 3d March, 1899, they evidently meant that the payments were to be for those losses, to go to the next of kin of those persons who had suffered them.

The plaintiffs in error contend that the Court of Claims, in their findings, meant to determine that Samuel Smith and James A. Buchanan, the owners in copartnership of the property seized, assigned a one-third share, or some share, in their claims to William B. Buchanan, who was taken into partnership with them in the year 1818, and that, in consequence thereof, the next of kin of the said William B. Buchanan were entitled to share concurrently with the next of kin of Samuel Smith and James A. Buchanan, respectively.

The answer to this contention is that the Court of Claims made no such determination. If they had had any such assignment under their consideration—*whether they meant to report in favor of it or not*—it was expressly made their duty by the clear and positive words of the Act of 1885, to determine and report with the name of the assignee, "the date of the assignment, with the consideration paid therefor." (Record, page 46.) The fact that they made no such finding is conclusive proof that no assignment was recognized, no such determination made.

When, therefore, we see that the Court of Claims, notwithstanding the abundant evidence accessible to them that Samuel Smith and James A. Buchanan alone suffered the losses upon which the claims were based, made their findings, the only inference, consistent with due respect for the Court

of Claims, is that in accepting William B. Buchanan as last survivor of the firm of S. Smith & Buchanan, and admitting his administratrix as the person to receive payment of the money which was to go to the benefit of the next of kin of the original sufferers, they acted under a mistake.

It was believed by the *counsel*, who represented all the next of kin of the original sufferers or claimants, that William B. Buchanan was a member of the firm in 1798, when the seizures occurred. The Petition of Esther S. Buchanan (Record, page 48), set up no assignment, but averred simply that William B. Buchanan was "survivor of the firm of Smith & Buchanan." The inconsistency perceivable in the findings of facts, pointed out in our Brief (page 15 *et seq.*) shows what an absence there was of critical investigation of evidence bearing upon the questions raised in the present Equity suit.

If a title by assignment had then been relied upon, justice to the Government would have demanded that it should be distinctly set up. In short, the fact of the *Mistake* is evident. It involved the counsel representing the claims. It was not disclosed in the bill of complaint in the present suit, and was discovered by counsel of the Defendants in Error by cross-examination of Miss Esther S. Buchanan. Upon the discovery, the Amended Answers were filed. (Record, page 28 and page 31.)

The idea, therefore, gravely insisted on in behalf of the plaintiffs in error, that, in the Court of Claims, there was an investigation of a claim of the next of kin of William B. Buchanan to take a third, or any part, of the claim by *assignment*, is purely imaginative and groundless.

All the conduct of every one concerned in the claim corroborates the fact that the insertion of Miss Buchanan as administratrix of William B. Buchanan was simply due to a mistaken notion that William B. Buchanan was one of the firm when the seizures were made.

II.

How the Court of Claims came to fall into the mistake of supposing that William B. Buchanan was a member of the firm at the time of the Seizures by the French.

At an examination before a commissioner in Baltimore on a commission issued from the Court of Claims, Charles W. Russell being present for the United States, Miss Esther S. Buchanan testified as follows:

> "2d question (by petitioner's counsel). State what you know of a partnership known as S. Smith & Buchanan, who were the members of it, and who was the survivor?
>
> 2d answer. The firm consisted of James A. Buchanan, my grandfather, Samuel Smith, and William B. Buchanan, my father. Samuel Smith was the brother of my grandmother on my mother's side, William B. Buchanan, my father, was the survivor of the firm.
>
> (Objected to as hearsay.)
>
> 3d question. State where this firm was in business, and when, to the best of your information?
>
> 3d answer. In the city of Baltimore, during the last part of the last century and the first part of this century. I think the firm carried on business on Gay street." Record, page 50.

It is not surprising that counsel and the Court of Claims relied on this explicit statement of Miss Buchanan, and did not institute a careful examination of the voluminous documentary evidence filed in the case. (See also Miss Buchanan's Petition in the case of the Jane, Record, page 48.)

III.

Did Congress, in making the appropriations, act upon the theory that William B. Buchanan had title as Assignee?

The language of appropriation on the one claim is to "Esther S. Buchanan, administratrix, representing Smith & Buchanan," and on the other claim, "Esther S. Buchanan, administratrix of the estate of William B. Buchanan, who was the surviving partner of the firm of S. Smith & Buchanan, deceased." (Record, page 95, 30 Stat. at L. 1161 to 1205.) There is nothing, therefore, on the face of either appropriation to indicate a title by assignment; and, on the other hand, we have the positive declaration in the proviso prefixed to all the appropriations for French Spoliation Claims, and consequently applying to each of these, which, as the same words were interpreted in Blagge vs. Balch, in effect provided that no assignee should be allowed to take, and, also, in this Act of March 3, 1899, the further peremptory proviso at the end of this class of appropriations, "Provided, however, that any French Spoliation Claim appropriated for in this Act shall not be paid if held by assignment." (30 Stat. at L. 1205 and Record, page 96.)

If, at any time, any French Spoliation Claims held by assignment have been paid by Congress, inadvertently or otherwise, that is something with which we have nothing to do. Clearly, under the Act of 1899, Congress intended that no assignments should be recognized, and expressly provided that no French Spoliation Claim appropriated for therein should be paid if held by assignment. If in any exceptional cases Congress has departed from its rule of making the appropriations for the next of kin of the original sufferers, doubtless its intention to make such departure was manifested unambiguously.

IV.

The Plaintiffs in Error charge, in their first supplemental brief, entitled "Reply, etc.," that the counsel representing the claims of S. Smith & Buchanan in the Court of Claims acquiesced in the making by that Court of Findings which, as the Plaintiffs in Error construe them, amount to a determination *in favor* of the next of kin of William B. Buchanan,

and *adverse* to all the next of kin of Samuel Smith and all the next of kin of James A. Buchanan, except the Plaintiffs in Error—to the effect that William B. Buchanan acquired a good title by assignment to an interest in the claim. This is tantamount to an allegation that all the counsel employed for the common interest of all the next of kin of both Samuel Smith and James A. Buchanan, including in the latter Miss Buchanan and her brother, grossly violated their professional duty, by procuring for these two of their clients a great advantage, to the detriment of all their other clients, and this without notifying the latter that any such question was in issue, or affording them an opportunity to appear and resist the pretension so set up adversely to them. This reflection upon the honor of the counsel who represented all the claimants under S. Smith & Buchanan collectively in the Court of Claims is not justified by a scintilla of evidence, was not alleged in the bill, nor set up in the Maryland Court, and is broached for the first time in argument here. We think this Court will believe that it is impossible that the counsel in the Court of Claims could have been guilty of conduct so unprofessional.

In truth, the whole current of events, all the conduct of the parties, shows that, as the Court of Appeals of Maryland has found as a fact, the counsel supposed, and the Court of Claims was led to suppose, that William B. Buchanan was a partner in the house of S. Smith & Buchanan before and at the time of the French seizures.

V.

By the true construction of the proviso attached to the Act of Appropriation, the persons named in the Act as payees are directed to distribute the money among the next of kin of the original sufferers, thus necessarily leaving the Courts having jurisdiction of the subject-matter and of the parties to decide all questions involved in the distribution among the next of kin of those who as owners of the captured vessels or cargoes at the time of seizure, were the original claimants.

The proviso begins: "That in all cases where the the original sufferers were adjudicated bankrupts, the awards shall be made on behalf of the next of kin"—that is, next of kin of the original sufferers. The Act continues: "And the awards in the cases of individual claimants;" by which expression, Congress meant "individual claimants as contradistinguished from corporations." 162 U. S., 460. And it necessarily meant cases of individual *original* claimants, or original sufferers, and not cases prosecuted at the date of the act by individual administrators or trustees. For, whether the claim was prosecuted by an individual or corporation as trustee or administrator was obviously immaterial. In the cases then of individual original sufferers, the Act goes on to direct that the awards "shall not be paid until the Court of Claims shall certify to the Secretary of the Treasury that the personal representatives on whose behalf the award is made represent the next of kin." Whose next of kin? Next of kin of their own decedents? Clearly not, for if that were the construction, the plaintiff in error would hold the whole fund for the next of kin of her own decedent, William B. Buchanan—a construction so manifestly inequitable as to revolt the consciences even of our friends on the other side. (Original Brief of Plaintiffs in Error, page 17.) Moreover, in some cases, the Act does not mention of whose estates the payees were administrators—as for instance, the appropriation here to "Esther S. Buchanan, administratrix, representing Smith and Buchanan." The only alternative is that Congress meant *next of kin of the original sufferers*, the original "individual claimants."

This is the construction adopted by this Court in *Blagge* vs. *Balch*.

For instance, it was there said:

> "The fund passed to persons of the blood *of the original sufferers*, or who might be entitled under the Statutes of Distributions which had been provided in each State." 162 U. S., 462.

And again:

> "It appears to us that Congress intended that the next of kin should be the beneficiaries in every case; that the limitation is express; that creditors, legatees and assignees, *all strangers to the blood are excluded.*" 162 U. S., 460.

Still again:

> "Congress *in order to reach the next of kin of the original sufferers*, capable of taking at the time of distribution, on principles universally accepted as most just and equitable, intended next of kin according to the statutes of distribution of the respective States of the domicile of the *original sufferers.*" 162 U. S., 464.

In other words, the proviso was construed as if it had in terms said: "Provided that in all cases where the original claimants were individuals the fund shall be distributed, by the personal representatives to whom as trustees the appropriations are to be paid, among the next of kin of the original sufferers." In clear cases, the trustees may safely make the distribution on their own authority; in cases of doubt, they should ask the direction of a Court of Equity, which would always have jurisdiction to determine all disputed questions of fact and protect both trustee and *cestuis que trust.*

It follows necessarily that such Courts of Equity must have power to determine who were the original sufferers in the case of each vessel or cargo, if any question in respect to that point be raised. Even if Congress *might* by unambiguous language have declared that William B. Buchanan or any other stranger should be conclusively taken to have been an original sufferer, still in the absence of such clear expression Congress cannot be believed to have shut off judicial inquiry as to the actual facts.

VI.

Even if the appropriation had been expressly made to a firm composed of Samuel Smith, James A. Buchanan and William B. Buchanan, yet

anyone who had obtained that appropriation by fraud or breach of trust, would be held in equity as trustee ex maleficio for the defrauded or injured party.

A strong and recent case in this Court laying down this principle of equity is *Angle vs. Chicago, St. Paul, etc., Ry.*, 151 U. S., 1, which was re-affirmed in Farmers Loan and Trust Co. vs. Railway Co., 163 U. S., 31, 47, although in the latter case it was held on the facts that no fraud was proved.

There is in this doctrine "no impugning the motives, the wisdom, or the power, of the Legislature." 151 U. S., 20. "There is no more challenge of the validity of the legislation * * * than there is a challenging the validity of a criminal proceeding by an action against the prosecutor for malicious prosecution." *Ibid.* It fully recognizes the validity of the statute, and simply requires the party to deal equitably with money, or property, which he has obtained by it.

We need not deny that by clear language the application of this equitable doctrine might be excluded. For instance, Congress might have said, "We give one-third of this money to Miss Esther S. Buchanan and her brother in spite of her breach of trust, and we leave her deceived and injured *cestuis que trust*, or parties whose fiduciary she was, no redress or means of reaching the fund." But most certainly it said nothing of this sort; and in the absence of such express declaration the doctrine of the Angle case certainly applies. "It (the Legislature) may be presumed to have left to the Courts the redress of the private wrongs." 151 U. S. 20.

The *public* interest in these French Spoilation cases is at an end when the money is paid out of the Treasury, and the obligation of the United States, legal or moral, discharged. Congress, as the custodian of the public interests, was concerned only with the validity and amount of the

claim; and is therefore, according to this Court's decisions, not to be considered as deciding questions of *private* right as to the equitable ownership of the monies paid. Said Mr. Justice Brewer, speaking for this Court, in the Angle case:

> "The Legislature may proceed with sole regard in all its actions to the public interests, with the assurance that all questions of wrong and loss between individuals will be settled in the judicial department, and that its own action in subserviency to the public interest will bar no redress of a private wrong unless such bar be absolutely necessary to the accomplishment of the public interest." 151 U. S. 21.

In this case Miss Buchanan concedes that she was the representative and fiduciary of all the defendants in error. Her deposition used before the Court of Claims stated—innocently no doubt, but nevertheless untruly—that her father was in business as a member of this firm of S. Smith & Buchanan "during the last part of the last (the 18th) century" and was the survivor of the firm. (Record, page 50.) That, in reliance upon this representation, counsel, who intended to act for the common benefit of all, shaped the proceedings in the Court of Claims and prepared the findings of that Court, is found as a fact by the Court of Appeals, and is established by the evidence. Moreover, as fiduciary, it was Miss Buchanan's duty to disclose all material facts, particularly where her own interests were concerned; yet she never disclosed until after the institution of this suit, and then only on cross-examination, that her father was only three years old in 1798. Now, this trustee, this trusted fiduciary, comes into this Court and says: "My misrepresentation has procured an Act of Congress which on *my* construction gives one-third to myself and my brother; and those who trusted me to act as an impartial representative of their claim find that although they as next of kin of the original sufferers would ordinarily, according to Congress' rule, be entitled to the money, yet a third is to be diverted from them to me and my brother."

Can a fiduciary take such a position in a Court of Equity? Does not the case clearly fall within the Angle case? In our opinion, the Act of Congress here imposes an *express* trust for the benefit of the next of kin of the original sufferers; but if not, an implied trust will be imposed by equity. As this Court said in the Angle case with reference to a legislative grant of lands:

> "While no express trust is affirmed as to the lands, yet it is familiar doctrine that a party who acquires title to property wrongfully may be adjudged a trustee *ex maleficio* in respect to that property." 151 U. S. 26.

This element of breach of trust was lacking in the overruled *nisi prius* case of Penniman vs. Hook, printed by the other side as a supplement to their brief. In that case no confidence had been reposed by the next of kin of the true original sufferer in the administratrix who prosecuted the claim. Hence, their position did not appeal so strongly to a Court of Equity as does that of the present Defendants in Error, whose confidence has been abused.

We may add that while this doctrine of the Angle case is clearly *sufficient* to warrant a decree in our favor, yet we apprehend that it is by no means *necessary*. In other words, our case does not rest on that alone.

See particularly *Stewart vs. U. S.*, 27 Ct. of Cl. 221, the case of *the Clio* cited by the Court of Appeals (Record, page 101), and stated in our original Brief, pages 9-10.

VII.

The doctrine of the Angle case is in reality an extension and application of the principle of *Johnson vs. Towsley*, (13 Wall. 72), and the other cases cited on our Brief, page 26. Another application of the same principle is found in the Alabama Claims cases, cited on our original brief, page 22.

All go upon the ground that if possible the parties adversely interested must have a right to be heard upon the questions on which in equity the private ownership of the land or the money depends.

VIII.

In refutation of the contention that the certificates given by the Court of Claims to the Secretary of the Treasury are judgments conclusive of the rights of the beneficiaries, we refer, in addition to the cases cited on this point in our original brief, to Hooper vs. U. S., 28 Ct. of Cl. 480, where that Court said:

> "Congress wished (by requiring this certificate) to protect the flesh and blood of the original sufferers from any invasion or sacrifice of right. The certificate required by the State as a prerequisite to the payment of an award at the Treasury into the hands of a personal representative does not determine the rights of beneficiaries. * * * The right to an award made by an Act of Congress is a legal right which can be the subject of an action in other courts. The final determination of a right to these statutory awards is not within the jurisdiction of this Court, and most certainly cannot be made on an *ex parte* application for a certicate." 28 Ct. of Cl. 482.

This case is cited with approval by this Court in *Blagge* vs. *Balch*, 162 U. S., 463.

IX.

The assertion of the Plaintiffs in error that there is no evidence in the record as to the rule of division between the partners after the admission of William B. Buchanan, is not conceded to be correct. James A. Buchanan in the insolvency proceedings in 1821, said "I recollect no payments which do not appear on said books, unless it be some trifling sums, less altogether than $1000, unexpectedly recovered, on accounts which had been closed, and which sums were used for family expenses, *in equal portions*, by my senior partner and myself." (Record, page 88.)

Therefore, Samuel Smith was recognized as entitled to one full half.

X.

It is obvious that in any case of partnership changes, the firm as secondarily constituted, may and often does in commercial practice, take charge of, or, if legal formalities are observed, hold the legal title to, and proceed to collect claims belonging to the original firm, or firm as originally constituted, for the account, however, of the original members. A surviving partner of the later firm, or his administrator, may, therefore, well collect claims in which he has no *equitable* interest. There is no necessary inconsistency between the holding of the legal title by an administrator of a partner, and a liability on his part to account, equitably, to the representatives of the original partners.

XI.

Williams vs. Heard, 140 U. S. 529, and Butler vs. Goreley, 146 U. S. 303, have been attempted to be distinguished from this case, in the first supplemental brief of the plaintiffs (entitled Reply, etc.,) page 5, on the ground that the claims under the Alabama Act were "claims tantamount to property rights, transmissible in all respects as property and totally different from these claims which were mere gratuities, gifts of grace, in which no parties had any legal rights, in any way transmissible at all."

But, even if such a difference existed to the full extent claimed, it would not prevent the cases in question from being authority on the point for which we have cited them in our Brief, pages 22, 23.

In fact, however, as this Court has held, claims under the Alabama Act and claims under the French Spoliation Acts, notwithstanding the modal variances made by Congress in the treatment of them, all belong to the same genus, in that the claimants, before the passage of the Acts, had no claim, legal or equitable, upon the Government.

In Williams vs. Heard, this Court said of the Alabama claimants: "No individual claimant had, as a matter of strict legal or equitable right, any lien upon the fund awarded, nor

was Congress under any legal or equitable obligation to pay any claim out of the proceeds of that fund." 140 U. S. 538.

In U. S. vs. Realty Co., 163 U. S. 427, this Court had occasion to consider the question of the constitutional power of Congress in respect to gifts not founded on obligation of some kind or other, and in its opinion, delivered by Mr. Justice Peckham, various cases were reviewed, in which the Government was under no legal or equitable obligation, and where therefore the gift, in a legal sense, was a mere gratuity, but a gratuity bestowed in consideration of a moral obligation. Cases under the Alabama Act were considered to be cases of this description. The Court said, in regard to them: "Thus it is seen that there were no legal claims of the holders of those war risks upon the government for the payment to them of any sum whatever. The award made by the tribunal, which was paid to the United States by Great Britain, was held to have been made to the United States as a nation, United States vs. Weld, 127 U. S. 51, and the fund itself came into the treasury as any public moneys of the country." 163 U. S., 442.

This Court, in the same opinion, proceded to say: "Among the latest examples of payments that are not of right or of any legal claim, but which are in the nature of a gratuity depending upon equitable considerations, are the cases just decided by this Court of Blagge vs. Balch, Brooks vs. Codman and Foote vs. Woman's Board of Missions, reported as one case in 162 U. S. 439." 163 U. S. 442, 443.

XII.

The case of Allen vs. Smith, 173 U. S., 389—like U. S. vs. Realty Co. a case arising under an Act for the benefit of manufacturers of sugar who had been prevented from receiving the bounty held out by the Tariff Act of 1890 by the repeal of the latter—in recognizing the necessity of

some moral obligation to justify, constitutionally, a donation by Congress, this Court in its opinion, delivered by Mr. Justice Brown, said, with reference to a certain suggested distinction: "This dissociates the bounty altogether from the motive which actuated Congress in granting it, and turns it into a mere donation of so much money, which it cannot be presumed to have made, even if it had the power. Bounties granted by a government are never pure donations, but are allowed either in consideration of services rendered or to be rendered, objects of public interest to be obtained, production or manufacture to be stimulated, or moral obligations to be recognized. To grant a bounty irrespective altogether of these considerations would be an act of pure agrarianism; and *to determine who is entitled to the benefit of the bounty is but little more than to determine who has rendered the consideration.*" 173 U. S. 402.

(The italics are not in the report.)

Now in the present case, without at all raising any question as to what it may be in the *power* of Congress to do, in the way of free bestowment of money out of the treasury of the country, we believe it is allowable to urge that it must be presumed that Congress did not mean to go beyond the range of the "equitable consideration" which induced it to make provision at all for the representatives of the sufferers by French spoliation; that it could never be the intention to deprive those within the consideration representatively, namely the next of kin of original sufferers, of any part of the gift, for the benefit of the representatives of an individual wholly out of the scope of the "consideration"—a mere stranger.

If such was not, presumably, within the intention of Congress, Equity, we submit, has full jurisdiction to carry into effect the expressed general intention as applied to the facts of the present case, under the circumstances of the present case.

We respectfully submit that there was no error in the decree of the Court of Appeals of Maryland, and that the reasons given in the opinion of that learned Court (Record, pages 97–102), fully justify their decision.

Respectfully submitted,

ARTHUR W. MACHEN,
ARTHUR W. MACHEN, JR.,
For Laura Patterson and Others, Defendants in Error.
FRANK P. CLARK,
For Mary Coles Carter and Others, Defendants in Error.

NOTE—

In the brief filed by the Attorneys for the Plaintiffs in Error, entitled "Reply of Plaintiffs," etc., occurs the following passage:

Page 4—"Therefore, the facts found by the Maryland Court of Appeals are, that all the conclusions of law and fact appearing in the Findings of the Court of Claims and the action of Congress in strict accordance with those findings, were the result of the consent, authority and instructions to that effect, *given this plaintiff in error*, by the parties who are now here as defendants in error, *whose own chosen counsel framed*, in the name and for the benefit of the plaintiff in error, the very terms of the findings of the Court of Claims and of the Acts of Congress which gave her her rights. In a word, what the plaintiff in error did or what was done in her name, by *counsel actually chosen by and representing the defendants in error*, and instructed by them, was pursuant to what the defendants in error then denominate in their brief 'the good understanding between the *cestuis que trustent* and the claimant,' Esther S. Buchanan, administratrix of William B. Buchanan." (Italics mine.)

This is only one of a number of similar statements found in this brief all tending to give the impression that Miss Buchanan was represented in the Court of Claims by her own counsel, and that, therefore, all other parties interested in the distribution of the fund, in this case, are estopped from making any claim which was not duly presented to the Court of Claims, when the matter was there for the action of that Court.

These statements are wholly erroneous. The fact is that the counsel who appeared in the Court of Claims represented the next of kin of Wm. B. Buchanan and also and *equally* the next of kin of James A. Buchanan and of Samuel Smith, and it was their duty to protect all alike.

It is a fact, however, that no question arose then or was even hinted or suspected that any conflict would ever arise between the parties, in the matter of the distribution of the fund when collected, the agreement and the sole agreement between the counsel in the Court of Claims and claimants was that they, their counsel, should collect the several amounts claimed from the Government, turn the money over to the persons authorized to receive the same, and this done, their employment came to an end. Counsel in the Court of Claims were no more responsible for the distribution of the monies when collected than they were for the expenditure by any one of the next of kin of the share that might be eventually awarded to him.

The amounts claimed under the various petitions were collected and duly paid over to the several administrators—that coming to Miss Buchanan was paid her early in July of 1899, and the counsel who had collected the same were then relieved from any further connection with the matter.

The bill in this case was filed on August 17, 1899, and the counsel now representing Miss Mary Coles Carter and others, Defendants in Error, was not retained to protect their interest until about the middle of September of that year.

It thus clearly appears that the argument so persistently pressed upon the Court that the present Plaintiffs in Error are entitled to some advantage growing out of the laches of counsel alleged to have represented Miss Buchanan in the Court of Claims is founded upon an utterly false assumption of evidence.

FRANK P. CLARK,

Supreme Court of the United States.

No. 266.—October Term, 1902.

Esther S. Buchanan et al., Plaintiffs in Error, vs. Laura Patterson et al. } In error to the Court of Appeals of the State of Maryland.

[June 1, 1903.]

The plaintiff in error, Esther S. Buchanan, filed her bill in Circuit Court No. 2, of Baltimore city, on August 17, 1899, against the parties defendant, for the purpose of obtaining the instructions of that court as to whom and in what proportions she should pay and distribute certain sums of money received by her from the United States under what is termed the French Spoilations acts of Congress. Answers were made by the various parties and a decree was subsequently entered giving directions for the distribution of the funds. An appeal from that decree was taken by some of the defendants to the Court of Appeals, and that court reversed a portion of the decree, (as to the proper distribution of the money,) and remanded the case for further proceedings. (92 Md. 334.) The trial court then entered a decree in accordance with the directions of the Court of Appeals, and thereupon the original plaintiff, Esther S. Buchanan, appealed to the Court of Appeals, and that court then affirmed the decree of the court below. (94 Md. 554.) Plaintiffs in error bring the case here by writ of error.

The first act of Congress relating to the French Spoliations was passed January 20, 1885. (23 Stat. 283.)

Miss Buchanan was, in May, 1885, duly appointed adminstratrix upon the estate of her father, William B. Buchanan, deceased. She then, through her counsel and in common with other claimants for losses sustained by the seizures of the two vessels Patapsco and Jane, came into the Court of Claims and proved the facts upon which the rights of the several claimants were based as against the United States. In presenting the claims, she did in truth represent, with their consent, all the parties interested therein, including those now claiming against her.

The court reported (May 18, 1887) that the seizures of the two vessels complained of were illegal, and that the claimants were entitled to the following sums from the United States. A list was then given of those entitled to an appropriation, on account of the ship Patapsco, in which was included the name of Esther S. Buchanan, as follows:

"Esther S. Buchanan, administratrix of the estate of William Buchanan, who was the surviving partner of the firm of S. Smith & Buchanan, deceased, to the sum of $25,056."

In relation to the ship Jane, in the list of those entitled to an appropriation was the following:

"Esther S. Buchanan, administratrix, representing Smith & Buchanan, $11,660.21."

After this report had been made, and on March 23, 1891, Esther S. Buchanan was duly appointed administratrix *de bonis non* with the will annexed of the personal estate of James A. Buchanan, her grandfather.

No action of Congress in relation to these claims was had until 1899, when an act was passed, approved March 3, 1899, (30 Stat. 1161.) The act provided for the payment of claims allowed under the Bowman and Tucker acts by the Court of Claims, and on page 1191 it provided as follows:

"French Spoliation Claims.

"To pay the findings of the Court of Claims on the following claims for indemnity for spoliations by the French prior to July thirtieth, eighteen hundred and one, under the act entitled 'An act to provide for the ascertainment of claims of American citizens for spoliations committed by the French prior to the thirty-first day of July, eighteen hundred and one:' *Provided*, That in all cases where the original sufferers were adjudicated bankrupts the awards shall be made on behalf of the next of kin instead of assignees in bankruptcy, and the awards in the cases of individual claimants shall not be paid until the Court of Claims shall certify to the Secretary of the Treasury that the personal representatives on whose behalf the award is made represent the next of kin, and the courts which granted the administrations, respectively, shall have certified that the legal representatives have given adequate security for the legal disbursements of the awards, namely."

Then follow appropriations to a number of claimants in satisfaction of the losses sustained by the illegal seizures of vessels and cargoes.

Among them, on page 1194, is included the following:

"On the ship Jane, John Wallace, master, namely:

"Esther S. Buchanan, administratrix, representing Smith & Buchanan, $11,660.21."

On page 1195 is the following:

"On the ship Patapsco, William Hill, master, namely: . . . (names of various claimants for other interests in same ship.)

"Esther S. Buchanan, administratrix of the estate of William B. Buchanan, who was the surviving partner of the firm of S. Smith & Buchanan, deceased, $25,056, the value of the cargo shipped by said firm."

Pursuant to the proviso in the act of 1899, the Court of Claims, upon the application of the attorney of record for Esther S. Buchanan, administratrix, representing Smith & Buchanan, deceased, ordered, in the case of

the ship Jane, a certificate to be issued to the Secretary of the Treasury, as follows:

"The Court of Claims hereby certifies that it appears by evidence on file in the above-entitled case that said Esther S. Buchanan, on whose behalf an appropriation or award was made by the act of March 3, 1899, entitled 'An act for the allowance of certain claims for stores and supplies reported by the Court of Claims under the provisions of the act approved March third, eighteen hundred and eighty-three, and commonly known as the Bowman act, and for other purposes,' for the sum of eleven thousand six hundred and sixty dollars and twenty-one cents ($11,660.21), represents the next of kin of William B. Buchanan, the surviving member of the firm of Samuel Smith & Buchanan, deceased, the original owner of the claim upon which said award was made.

"And the court further certifies that it appears on the record of the said case that at the time when the award of this court was made the said claim was not held by assignment or owned by an insurance company."

The same kind of a certificate was made in relation to the ship Patapsco.

These certificates were made on June 15, 1899, and were filed with the the Secretary of the Treasury, and the moneys mentioned, being a total of $36,716.21, were thereafter paid to Miss Buchanan.

Having received the money from the Government, the plaintiff in error then commenced this suit individually, and as administratrix of the estate of William B. Buchanan, deceased, and as administratrix *de bonis non* with the will annexed of James A. Buchanan, deceased, in Circuit Court No. 2, of Baltimore city, in which she stated the various facts under which the money had been paid her, and that she had in her hands for distribution, among the persons particularly entitled to the same, the sum of $22,629.47, after the payment of all costs, &c. She also averred that she was advised that she held funds for the benefit of and distribution among, not only the next of kin of her own decedent, the said William B. Buchanan, but also the next of kin of the other partners of said firm of S. Smith & Buchanan, to wit, Samuel Smith and James A. Buchanan, in the proportions and according to the laws of distribution which the court might hold to be proper in the cause. She also gave the names of the next of kin of William B. Buchanan, namely, herself and her brother, Wilson C. Buchanan, and then stated who were the next of kin of James A. Buchanan, deceased, living at the date of the passage of the act of Congress directing the payment of the claims, to wit, March 3, 1899, so far as they were known to her, and she stated that she had given the names of all of the next of kin of Samuel Smith and James A. Buchanan living at the time of the passage of the act of Congress, March 3, 1899, although she said there might be others unknown to her who might lay claim to participate in the distribution of the fund, and she was in doubt as to the proportion in which the beneficiaries should participate in the shares of their ancestors in the fund. She then stated:

"Twelfth. That according to the information and belief of your oratrix, the said Samuel Smith, James A. Buchanan and William B. Buchanan were equal copartners, but a claim has been made on your oratrix by Robert Carter Smith, one of the distributees of Samuel Smith, and a party defendant herein, wherein he asserts that his ancestor, the said Samuel Smith, had a one-half interest in the property of said copartnership, and that, therefore, the next of kin of the said Samuel Smith are entitled to have for distribution among them one-half of the fund now in the hands of your oratrix for distribution; but your oratrix is informed and does verily believe that distribution of said fund should be made in three equal parts among the next of kin of the three partners in said firm of S. Smith & Buchanan."

Other facts were given in relation to the existence of parties who might possibly claim some interest in the fund, and in her complaint she finally said that, by reason of the facts above set forth, she was in doubt to whom and in what proportion she should pay and distribute the sum of money in her hands, and that she was advised and therefore alleges that a distribution of the same can only be had under the order of a court of equity in a manner adequate to insure her own protection in the future. She thereupon asked that the court assume jurisdiction of the fund in her hands as administratrix, as already set forth, and that it direct and supervise the distribution of the same among the parties whom the court may find to be entitled to participate therein, according to the proportion and rule which this court may declare to govern the same.

Answers were made by some of the parties and the bill taken as confessed as against others. Upon the trial evidence was given under objection, and the State court has found that at the time of the illegal seizures of the vessels in 1798 William B. Buchanan was about three years old, he having been born on September 9, 1795; that in 1798, the year the losses occurred, there was a firm of S. Smith & Buchanan, consisting only of S. Smith and James A. Buchanan, the father of William B. Buchanan, and they were the only original sufferers from the illegal seizures of the ships. William B. Buchanan did not become a member of the firm until about twenty years later, or until January 1, 1818, and he became the survivor of the firm formed in 1818, which was also known as S. Smith & Buchanan.

It thus appears that although William B. Buchanan was the survivor of a firm of S. Smith & Buchanan, as that firm was constituted in 1818, he was not the survivor of the firm of S. Smith & Buchanan, as that firm was constituted in 1798, when these illegal seizures occurred.

The trial court held that the moneys should be divided into three portions, one of which should go to the next of kin of Samuel Smith, another to the next of kin of James A. Buchanan and another to the next of kin of William B. Buchanan, being Esther S. and Wilson C. Buchanan.

The Court of Appeals, on appeal from the decree of the Circuit Court, held that this was an erroneous disposition of the money, and that it should be

divided into two portions, one of which should go to the next of kin of Samuel Smith, and the other to the next of kin of James A. Buchanan; Samuel Smith and James A. Buchanan being the only members of the firm that sustained the losses and being the original sufferers from the illegal seizures. The writ of error has been sued out for the purpose of reviewing this decree.

Mr. Justice PECKHAM, after making the foregoing statement of facts, delivered the opinion of the Court.

The contention of the plaintiffs in error is that Congress, by the acts mentioned, and particularly that of March 3, 1899, ratified and adopted the findings and decisions of the Court of Claims made in pursuance of the act of 1885, in the cases of the two ships Patapsco and Jane, and that the act of 1899 recognized and designated William B. Buchanan as an original sufferer within the meaning of Congress, by virtue of his being a partner, and the surviving partner, of S. Smith & Buchanan, and that the act gave to the personal representative of William B. Buchanan the awards in question, for the benefit of his next of kin and the next of kin of his two partners. They also assert that the Court of Claims having made the additional final certificate required by the act of Congress, and the Secretary of the Treasury, in accordance with those certificates, having paid the money to the plaintiff in error, administratrix, for the benefit of the next of kin of William B. Buchanan, to the full extent of his partnership interest in the firm, there was no power in any court to in anywise alter the statute or make any other distribution than such as would give to the next of kin of William B. Buchanan one-third of the total sum to be distributed.

It becomes necessary, in order to fully appreciate the action of the Court of Claims and of Congress subsequently to the passage of the act of 1885, to examine the latter act and determine its scope and purpose. The act provided for an investigation to be undertaken by the court as to the validity of the claims for indemnity upon the French Government, for losses of citizens of the United States or their legal representatives, arising from illegal captures, seizures, &c., of vessels or cargoes prior to the treaty of 1800 between France and the United States. The act did not assume to provide for the identification of all the next of kin of the original sufferers from such illegal seizures. The court was to determine the validity and the amount of the claims included within the description contained in section 1 of the act of 1885, and it was also to determine the present ownership of such claims. The matter of chief importance between the claimants and the United States was for the court to ascertain and determine the validity and the extent of the claims.

The particular class of persons who were the owners of the claims and to whom the moneys might be properly paid was at this time of subsidiary importance, so far as the United States was concerned. Although the present ownership was to be determined, and if by assignee, the date of the assignment and the consideration paid therefor, yet this was obviously for the mere purpose of informing Congress as to the present situation of a claim, whether owned by next of kin of those who suffered the loss or by assignees, but the particular individuals who composed the next of kin or the assignees were not then of importance, as gathered from the language and purpose of the act. All this action of the court was by the terms of the act made advisory only. Congress specifically withheld from the court any right to render a judgment which would in any manner conclude the United States or commit it to the payment of any claims determined by the court under the third section of the act. All that Congress did was to give jurisdiction to the Court of Claims to inquire into the matter of each claim which might be presented to it and to report to Congress its opinion of the validity and the amount of the claim with a statement as to its ownership. The whole subject thereafter remained with Congress subject to its future action.

Regarding its powers and duties under this act, the Court of Claims itself stated its opinion in the case of the ship Jane. (24 C. Cl. 74.) It held that the court could not determine to whom the money should be distributed, which Congress might thereafter award as indemnity in the French Spoliations cases, nor could it determine who were the next of kin of a deceased claimant, nor whether there were any. All that the court could determine in its report to Congress was the validity of a claim against France, its relinquishment by the United States and the amount thereof. It also held that its decisions in these cases were not judgments which judicially affect the rights of any one, and that after the court had reported a French spoliation case it remained with Congress to determine, first, the measure of the indemnity which the United States should give; and, second, the persons who were equitably entitled to participate therein. The purpose of the court was, as it stated, to require a claimant to file his letters of administration and prove to the satisfaction of the court *that the decedent whose estate he administered was the same person who suffered loss through the capture of a vessel.*

Again, in *The Leghorn Seizures, Field, Administrator,* v. *United States,* (27 C. Cl. 224,) the court held that the French Spoliations act of 1885 conferred jurisdiction, but did not impose liabilities; that Congress conceded that several classes of claimants seeking redress for French spoliations might come into the Court of Claims and have the question of the liability of the United States determined, and conceded nothing more.

From these extracts it is plain that the Court of Claims did not regard it as its duty under the act of 1885 to investigate and determine the rights of each individual of a class, but only to determine the validity and amount of a claim, with a specification of ownership sufficient to identify the claim itself, for the payment of which an appropriation might be thereafter made. The particular individuals of the class would be matter for subsequent investigation by some other tribunal.

In *Blagge* v. *Balch*, (162 U. S. 439,) the meaning and purpose of the act of 1885, together with the act of March 3, 1891, (26 Stat. 908,) came before this court for consideration, and it was held that the result of the action of Congress was to place the payments prescribed under the act of 1891 within the category of payments by way of gratuity and grace, and not as of right as against the Government; that under the proviso contained in the act of 1891, Congress intended the next of kin to be beneficiaries in every case, and excluded creditors, legatees, assignees and all strangers to the blood, and that the words "next of kin," as used in the proviso, meant next of kin living at the date of the act (1891), to be determined according to the statute of distribution of the respective States of the domicil of the original sufferers.

The court distinguished the case from *Comegys* v. *Vasse*, (1 Pet. 193,) and *Williams* v. *Heard*, (140 U. S. 529.) In these cases it was held that assignees in bankruptcy took title to the moneys.

The same proviso mentioned in *Blagge* v. *Balch*, (*supra*,) and contained in the act of March 3, 1891, is found in the act of 1899, (30 Stat. 1161, 1191.) So we know from the above case that the desire of Congress was to make payments to the next of kin of the original sufferers of the losses, and that assignees in bankruptcy should not take. The identification of the particular persons belonging to the class that Congress desired to aid was evidently not within the purpose of the act of 1891 or that of 1899.

Under the act of 1885, the plaintiff in error, Esther S. Buchanan, presented the claims arising out of the capture of the vessels Patapsco and Jane, together with their cargoes. It is not disputed—on the contrary, it is admitted—that she represented on the trial before the Court of Claims, with their consent, all the parties interested in the claim of S. Smith & Buchanan, including those who now claim in opposition to her so far as the proportion of the award to be paid to the different parties is concerned. That she represented these different persons, with their consent, in the examination before the Court of Claims, shows that there was between them at that time no diverse interest involved; that, so far as regarded the validity of the whole claim and its amount, the parties were situated alike, and had the same interest as against the United States in proving the validity of their claim and the amount thereof. That she was authorized to receive

the amount that might be awarded, and that thereafter the question of proportion and distribution would arise, is a plain deduction from the facts stated. As the material point before the Court of Claims was the validity of the claim and its amount, in regard to which all claimants appeared in the same interest, it was not of much moment who should be named to receive the award (if any were to be made), and therefore the statement by the court that Esther S. Buchanan was the administratrix of William B. Buchanan, the survivor of the firm, was not calculated to call for any comment, for the reason, as stated, that the appropriation would be to a representative of the next of kin, the individual members of which might be thereafter identified. The history given by the Court of Claims was, upon the question of ownership, just enough to form a basis for an appropriation to some one, who would thereupon distribute to the proper persons among themselves. The reports of the court were not intended as an identification of such persons.

After the report of the Court of Claims to Congress, Miss Buchanan had in 1891 taken out letters of administration upon the estate of James A. Buchanan. Soon after the passage of the act of 1899 she obtained the certificates already referred to from the Court of Claims, in one of which, in regard to the ship Jane, it was stated that she "represents the next of kin of William B. Buchanan, the surviving member of the firm of Samuel Smith & Buchanan, deceased, the original owners of the claim upon which said award was made," and in the other certificate, in regard to the ship Patapsco, it was stated that she "represents the next of kin of William B. Buchanan, surviving partner, &c., deceased, the original owner of the claim upon which said award was made." These certificates obviously proceeded upon the report which the court had theretofore made in these two cases, and in which it is plain that the court reported the fact that the members of the firm of S. Smith & Buchanan, as that firm was constituted in 1798, were the original sufferers of the loss in 1798. It is also plain that the court assumed that the William B. Buchanan named in the certificate was a member of the firm in 1798, which suffered the loss, and it was to the administratrix of the survivor of that firm (1798) that the certificate in truth applied. This simply carried out the pupose of the court, expressly stated in this case, to insist that the decedent whose estate was administered was the same person who suffered loss through the capture of a vessel. In the certificates, as well as in the report of the Court of Claims, it is evident that the court assumed that the persons entitled to the distributive share of the moneys were the next of kin of the original sufferers, whoever they might turn out to be, although the court supposed that William B. Buchanan was the survivor of the firm that suffered the loss in 1798.

The case of *United States* v. *Gilliat*, (164 U. S. 42,) simply holds that under the special statute therein referred to the certificate made by the

Court of Claims and sent to the Secretary of the Treasury was conclusive, and the United States had no right of appeal from the conclusion stated in the certificate.

In this case, the Court of Claims thought there were three members of the firm of S. Smith & Buchanan at the time of these captures. In the fourth finding, in regard to the ship Patapsco, the court reported that "John Donnell and the firm of S. Smith & Buchanan owned jointly the cotton shipped on that vessel, and that Samuel Smith, James A. Buchanan and William B. Buchanan, citizens of the United States, formed the said firm of S. Smith & Buchanan;" that is, formed the firm at the time of the capture in 1798; and in the tenth finding the court found that on November 9, 1820, "said Samuel Smith, James A. Buchanan and William B. Buchanan, copartners, and trading as hereinbefore set forth as copartners, under the firm name of S. Smith & Buchanan, assigned" to assignees for the benefit of their creditors. Thus the court assumed that the firm consisted of the same members in 1798 and in 1820, and that William B. Buchanan was the survivor. This is clearly a mistake. William B. Buchanan was born in 1795, and was then, at the time of these captures, but three years old, and was not a member of the firm at that time, as the State court finds. But clearly the Court of Claims had reference to the firm as it was composed when the losses occurred, whoever in fact were then the members of that firm.

There is nothing in its report which would show that it regarded William B. Buchanan as one of the original sufferers because of his being a member of the firm of 1818, of S. Smith & Buchanan. The whole history of the case as given by the court shows that William B. Buchanan was mistakenly supposed to have been a member of the firm in 1798, and it was on that account that he was regarded as the survivor of that firm. Whatever equity the parties might claim on account of William B. Buchanan becoming a member of the firm in 1818, it is plain that those equities were not regarded or known or supposed to exist by the Court of Claims.

Taking this report of the Court of Claims, it seems to us evident that the appropriations for the payment of the claims made by the act of 1899 (30 Stat. 1194, 1195) proceeded upon the report made by that court to Congress in these cases, and that the language of that act, in the case of the ship Jane, to "Esther S. Buchanan, administratrix, representing Smith & Buchanan, $11,660.21," and in the case of the ship Patapsco, "Esther S. Buchanan, administratrix of the estate of William B. Buchanan, who was the surviving partner of S. Smith & Buchanan, deceased, $25,056, the value of the cargo shipped by said firm," when taken in connection with the other facts as to the firm of 1798, shows that the appropriation was intended for the administratrix of the survivor of the original firm exist-

ing in 1798, at the time the losses occurred, and that the next of kin of the members of that firm at that time were in reality the parties intended by Congress to receive its gratuity. It was not within the intention of Congress to determine by the appropriation who those persons were, but the appropriation was to Esther S. Buchanan as a representative of the class; in other words, the representative of the next of kin of the original sufferers, without therein determining who they were. The intent of Congress to make the payment in each case to the representative of those who were next of kin of the original sufferers, or in other words, of the firm as it stood in 1798, we think is perfectly certain. Whoever they might be, Congress intended the payment to be for those who were the next of kin, and it did not conclude the fact as to who they were, by appropriating the money to Esther S. Buchanan. It was to be for her as the representative of the next of kin of the original sufferers.

Congress could, of course, have given this fund to any one it chose, as it was a case of gratuity in any event; but the question is, what did Congress, in fact, mean when it made the appropriation in the act of 1899, and that meaning, we feel convinced, was as we have already stated.

The cases of *United States* v. *Jordan*, (113 U. S. 418;) *United States* v. *Price*, (116 Id. 43,) and *United States* v. *Louisville*, (169 Id. 249,) are not in conflict with this result In those cases the appropriation was to the party named in the act and a specific sum was directed to be paid to such party. It was not a payment to him in trust for some other and unidentified members of a class to which he belonged, but it was a positive and absolute direction by Congress to pay to the individual named in the act the amount stated therein. In such cases there is no subject for identification of the members of any class and no occasion for the further action of any one before payment is to be made.

In the case at bar, it is clear that the party named in the appropriation was not entitled to the money absolutely as her own. It was an appropriation to her for the benefit of others, herself included, and those others were identified only as a class, and that class was intended as the next of kin of the firm of S. Smith & Buchanan, as it existed in 1798.

Having obtained payment of the sum appropriated by Congress, the plaintiff in error, Esther S. Buchanan, came into a court of equity and asked to have the fund distributed under its authority. She stated all the facts, and while claiming the right to share in the distribution of the money in her character as one of the next of kin of William B. Buchanan, yet she still submitted the whole question as to the proper distribution to the court. The court had jurisdiction to determine as to the real meaning and the proper construction of the act of Congress, and the highest court of that State, upon appeal from the trial court, has held in substance that it

appears that there were but two members of the firm in 1798, and it accordingly decided that the intent of Congress was clearly to make the gift to the next of kin of the members of the firm in 1798, which would result in giving one-half to the next of kin of S. Smith and the other one-half to the next of kin of James A. Buchanan, among whom are found Esther S. Buchanan and her brother, Wilson C. Buchanan.

We see no error in the decree of the Maryland Court of Appeals, and it is, for the reasons stated,

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.